UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2024

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: 001-41850

BEYOND, INC.
(Exact name of registrant as specified in its charter)

Delaware	**87-0634302**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
433 W. Ascension Way, 3rd Floor	
Murray, Utah	**84123**
(Address of principal executive offices)	(Zip code)

(801) 947-3100
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value per share	BYON	New York Stock Exchange

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

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

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

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

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

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

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

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

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

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

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

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

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second quarter (June 28, 2024), was approximately $0.6 billion based upon the last sales price reported by the New York Stock Exchange. For purposes of this disclosure, shares of Common Stock held by directors and certain officers and by others who may be deemed to be affiliates of the registrant have been excluded. The exclusion of such shares is not intended to, and shall not, constitute a determination as to which persons or entities may be affiliates as that term is defined in the federal securities laws.

There were 53,144,790 shares of the Registrant's common stock, par value $0.0001, outstanding on February 21, 2025.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III of Form 10-K is incorporated by reference to the Registrant's proxy statement for the 2025 Annual Stockholders Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

TABLE OF CONTENTS

	Special Cautionary Note Regarding Forward-Looking Statements	3
	Summary Risk Factors	4
	Part I	
Item 1.	Business	5
Item 1A.	Risk Factors	12
Item 1B.	Unresolved Staff Comments	28
Item 1C.	Cybersecurity	28
Item 2.	Properties	29
Item 3.	Legal Proceedings	29
Item 4.	Mine Safety Disclosures	29
	Part II	
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	30
Item 6.	[Reserved]	32
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	32
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	43
Item 8.	Financial Statements and Supplementary Data	44
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	83
Item 9A.	Controls and Procedures	83
Item 9B.	Other Information	85
Item 9C.	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	85
	Part III	
Item 10.	Directors, Executive Officers and Corporate Governance	86
Item 11.	Executive Compensation	86
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	86
Item 13.	Certain Relationships and Related Transactions, and Director Independence	86
Item 14.	Principal Accounting Fees and Services	86
	Part IV	
Item 15.	Exhibits, Financial Statement Schedules	87
Item 16.	Form 10-K Summary	91
Signatures		92

Bed Bath & Beyond, Overstock.com, Beyond+, Welcome Rewards, and Zulily are registered trademarks of Beyond, Inc. Other service marks, trademarks and trade names which may be referred to herein are the property of their respective owners.

SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this "Annual Report") and the information incorporated herein by reference, and our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are intended to be covered by the safe harbor provisions of these laws. You can find many of these statements by looking for words such as "may," "would," "could," "should," "will," "expect," "anticipate," "predict," "project," "potential," "continue," "contemplate," "seek," "assume," "believe," "intend," "plan," "forecast," "goal," "estimate," or other similar terms or expressions or the negative of these terms or expressions, although not all forward-looking statements contain these identifying terms or expressions.

These forward-looking statements involve known and unknown risks and uncertainties and relate to future events or our future financial or operating performance. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and business, and on management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to assumptions, risks, uncertainties, and other important factors that are difficult to predict, and that actual results and outcomes may be materially different from the results, performance, achievements, or outcomes expressed or implied by any of our forward-looking statements for a variety of reasons, including the risks, uncertainties and assumptions described in this Annual Report, especially under the headings "Summary of Risk Factors," "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Although we believe that our assumptions and expectations reflected in the forward-looking statements are reasonable as of the date of this Annual Report, we cannot guarantee or offer any assurance of future results, levels of activity, performance, achievements or events. Our forward-looking statements contained in this report speak only as of the date of this Annual Report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this Annual Report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

SUMMARY RISK FACTORS

Our business is subject to numerous risks and uncertainties, including those described in Part I, Item 1A. "Risk Factors" in this Annual Report on Form 10-K. You should carefully consider these risks and uncertainties when investing in our common stock. The principal risks and uncertainties affecting our business include the following:

- We depend on third-party companies to perform functions critical to our business, and any failure or increased cost on their part could have a material adverse effect on our business.
- We face intense competition and may not be able to compete successfully against existing or future competitors.
- We may not timely identify or effectively respond to consumer needs, expectations or trends, which could adversely affect our relationship with our customers, the demand for our products and services, and our market share.
- Our business depends on effective marketing, including marketing via email, search engine marketing, influencer marketing, and social media marketing. Our competitors have and may continue to cause us to increase our marketing costs and decrease certain other types of marketing, and have and may continue to outspend us on marketing or be more efficient in their spend.
- Economic factors, including recessions, other economic downturns, inflation, our exposure to the U.S. housing market, and decreases in consumer spending, have affected and could continue to adversely affect us.
- Tariffs, bans, or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers or fulfillment partners import into the United States could have a material adverse effect on our business.
- Our changing business model and use of the Overstock brand, Bed Bath & Beyond brand, Zulily brand, and Beyond brand, could negatively impact our business.
- The changing job market, the changes in our leadership team, the change in our compensation approach, changing job structures, or any inability to attract, retain and engage key personnel could affect our ability to successfully grow our business.
- We rely upon paid and natural search engines to rank our product offerings, and our financial results may suffer if we are unable to maintain our prior rankings in natural searches.
- If we are not profitable and/or are unable to generate sufficient positive cash flow from operations, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so.
- Our business depends on the Internet, our infrastructure and transaction-processing systems, and catastrophic events could adversely affect our operating results.
- Compliance with ever-evolving federal, state, and foreign laws and other requirements relating to the handling of information about individuals necessitates significant expenditure and resources, and any failure by us, our vendors or our business partners to comply may result in significant liability, negative publicity, and/or an erosion of trust, which could materially adversely affect our business, results of operations, and financial condition.
- If we or our third-party providers experience cyberattacks or data security incidents, there may be damage to our brand and reputation, material financial penalties, and legal liability, which would materially adversely affect our business, results of operations, and financial condition.
- Failure to comply with, or changes in, laws, regulations and enforcement activities may adversely affect the products, services and markets in which we operate.
- From time to time we are subject to various legal proceedings which could adversely affect our business, financial condition or results of operations.
- Damage to our reputation or brand image could adversely affect our sales and results of operations.
- If we do not successfully optimize and operate our fulfillment center or customer service operations, our business could be harmed.
- If we fail to effectively utilize technological advancements, including in artificial intelligence, our business and financial performance could be negatively impacted.
- Global conflict could negatively impact our business, results of operations, and financial condition.
- Product safety and quality concerns could have a material adverse impact on our revenue and profitability.
- We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, product compliance with various laws and regulations, including registration and/or reporting obligations, and for proper labeling of products.
- We have an evolving business model, which increases the complexity of our business.
- Investment in new business strategies, acquisitions, dispositions, partnerships, or other transactions could disrupt our ongoing business, present risks not originally contemplated and materially adversely affect our business, reputation, results of operations and financial condition.

PART I

ITEM 1. BUSINESS

The following description of our business contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report, including those set forth under "Special Cautionary Note Regarding Forward-Looking Statements" Item 1A under the heading "Risk Factors," or elsewhere in this Annual Report.

Introduction

Beyond, Inc, is an e-commerce affinity marketing company with a singular focus: connecting consumers with products and services they love. As the owner of the iconic Bed Bath & Beyond, Overstock and Zulily brands, as well as several other brands, we strive to curate an exceptional online shopping experience. Our suite of premier online retail brands allow us to offer a comprehensive array of products and add-on services, catering to customers in the United States and Canada along with customers in Mexico through trademark licensing. Our e-commerce platform, which is also accessible through our mobile app, includes www.bedbathandbeyond.com, www.bedbathandbeyond.ca, www.overstock.com, and www.zulily.com, and is collectively referred to as the "Website." The Website is targeted at customers seeking a diverse array of top-tier, on-trend products at competitive prices. From furniture, bedding, and bath essentials to patio and outdoor furniture, area rugs, tabletop and cookware, décor, storage, jewelry, watches, and fashion – we offer an extensive range of products at a smart value. In addition to products, we also offer an increasing number of add-on services across our platforms, including warranties, shipping insurance, installation services, and access to home loans.

Our company, based in Murray, Utah, was founded as a Utah limited liability company in 1997, reorganized as a C corporation in the State of Utah in 1998, and reincorporated in Delaware in 2002. We launched our initial website in March 1999. In November 2023, we changed our corporate name from Overstock.com, Inc. to Beyond, Inc., and transferred the principal listing of our common stock from the Nasdaq Global Market to the New York Stock Exchange. As used herein, "Beyond", "the Company", "we", "our" and similar terms include Beyond, Inc. and its controlled subsidiaries, unless the context indicates otherwise.

Our Business

Our mission revolves around delivering an unparalleled shopping experience for products and services, tailored especially for our target audience – discerning consumers who seek seamless support in their search for high-quality, stylish products at competitive prices. Our commitment extends to providing a diverse range of offerings that cater to varied budget requirements.

In an ever-evolving market, our focus is on standing out in the online sphere by offering products and services for the home. We believe that our competitive edge lies in the following:

- **Simplified Customer Experience:** We prioritize an easy, user-friendly interface, emphasizing price, value, and quality. Our extensive product range is delivered in a personalized format, accessible seamlessly through our mobile app, and complemented by our dedicated customer service team.
- **Cutting-edge Technologies:** Our proprietary technologies and strategic technical alliances enhance the overall shopping experience, providing our customers with an intuitive and streamlined experience.
- **Specialized Logistics:** Our logistics capabilities are finely tuned to the demands of the furniture and home furnishings category, which we have honed over decades of e-commerce expertise.
- **Strategic Partnerships:** We foster long-term, mutually beneficial relationships with third-party manufacturers, distributors, and suppliers, collectively referred to as our "partners". This network forms the backbone of our supply chain, allowing us to pursue our goal of consistently meeting customer demands. In addition to our partners, we've entered into a collaborative partnership with Kirkland's Home brand that will allow us to bring back the brick & mortar experience to our customers by providing Kirkland's, Inc. with an exclusive license to operate Bed Bath & Beyond neighborhood stores. We also partner with third parties to provide various financial products and services.
- **Customer Loyalty Programs:** Our customer engagement and retention are bolstered by our Beyond+ membership program and our Welcome Rewards loyalty program, enhancing the overall value proposition for our customers.

We endeavor to continually expand our product assortment, which as of the date of this Annual Report, reaches into the millions, to keep pace with current trends and evolving customer preferences. The vast majority of our retail transactions are fulfilled through our network of partners, who benefit from the access we provide to a large customer base and a suite of convenient services, including marketing, order fulfillment, customer service, and returns handling. Our asset-light supply chain allows us to ship directly to customers from our partners or our warehouses, which primarily handle orders from our partners' owned inventory.

Additional Offerings

We offer additional products or services that may complement our primary retail offerings but are not significant to our revenues, including:

- **Business Advertising Opportunities:** Providing businesses with a platform to showcase their products or services on our Website, fostering additional exposure and opportunities for collaboration.
- **Marketplace Services:** Offering a unique service to our partners, enabling them to showcase and sell their products on third-party sites through our Marketplace, creating additional avenues for sales and visibility.
- **International Sales Support:** Facilitating international sales for certain customers outside the United States through third-party logistics providers, broadening our reach and enhancing global accessibility.
- **Supplier Oasis Integration:** Our Supplier Oasis platform, a singular integration point that empowers our partners to efficiently manage their products, inventory, and sales channels. This streamlined interface also provides access to multi-channel fulfillment services through our expansive distribution network, enhancing operational efficiency for our valued partners.

Manufacturer, Distributor, and Supplier Relationships

We proactively cultivate and nurture relationships with manufacturers, distributors, and suppliers to help provide an uninterrupted stream of diverse product offerings for our customers. While our manufacturers, distributors, and suppliers regularly update us on available product quantities, our arrangements with them typically do not guarantee the sustained availability of these products over a predetermined period. Our relationships are generally non-exclusive. This allows us the flexibility to exercise discretion in selecting and changing suppliers based on our evolving product assortment needs. The terms under which products are sold through our Website are predominantly in our discretion.

Sales and Marketing

We employ a diverse array of strategies to market to and engage our retail consumer audience, using both traditional and digital channels. Our outreach includes targeted direct mail as well as online initiatives, encompassing search engine marketing, display ads, affiliate marketing, e-mail campaigns, and social media promotions. Additionally, we enhance brand visibility through comprehensive advertising efforts across television, video ads, streaming video and audio platforms, social media channels, and strategic event sponsorships.

Customer Service

Our commitment to delivering unparalleled customer service extends across our channels, including our app and Website. Staffed by a team of dedicated in-house and outsourced professionals, our customer service department seeks to provide prompt and thorough responses to customer inquiries via phone, SMS, instant online chat, and e-mail, regarding product information, order details, shipping status, returns, and various other customer queries.

In addition to our in-house services, we have trusted partners who independently manage their customer service requests that are held to our high standards, as outlined in their agreements with us.

Technology

We use our internally developed Website alongside a dynamic blend of proprietary technologies, open source solutions, and commercially licensed technologies to bolster our operational capabilities. We maintain connectivity to the Internet through partnerships with multiple telecommunications companies, in order to promote seamless access.

Our primary computer infrastructure is in a data center in Utah. We leverage additional data centers and tap into the resources of public cloud providers which play a pivotal role in functions such as backups, redundancy measures, development

and testing environments, disaster recovery protocols, and the overarching support of our corporate systems infrastructure. On December 20, 2024, we consummated the sale of our corporate headquarters located at 799 West Coliseum Way, Midvale, Utah, for $52.0 million. As part of the sale, we negotiated a lease agreement with the Buyer that allows us to continue to occupy and use the headquarters' data center, comprising approximately 5,000 square feet within the main building at the headquarters, and permit the data center to continue to be served by the existing building generators. See Item 2—"Properties."

Competition

E-commerce is intensely competitive and has relatively low barriers to entry. We believe that competition in this industry is based predominantly on:

- price;
- product and services quality and assortment;
- shopping convenience and product findability;
- website organization and experience;
- order processing and fulfillment;
- order delivery time and accuracy;
- customer service;
- website functionality on mobile devices;
- brand recognition; and
- brand reputation.

We compete with a diverse range of discount general retailers, off-price and club retailers, private sales platforms, specialty retailers, and liquidators in the online pure-play, brick-and-mortar, and omni-channel retail spheres, where the potential exists for competitors to emulate our strategies and target our customer base.

Our current and potential e-commerce competitors include entities that may have greater brand recognition, longer operating histories, larger customer bases, and significantly greater financial, marketing, and other resources than we do. Further, any of them may enter into strategic or commercial relationships with larger, more established and well-financed companies, including exclusive distribution arrangements with our vendors or service suppliers that could deny us access to key products or needed services at competitive prices or at all, or acquisitions of our suppliers or service providers, which could have the same effect. Many of them do or could devote greater resources to marketing and promotional campaigns and devote substantially more resources to their websites and systems development than we do. Many have supply chain operations that decrease product shipping times to their customers, have options for in-store product pick-up, allow in-store returns, or offer other delivery and returns options that we do not have. New technologies, the continued enhancement of existing technologies, developments in related areas such as same-day product deliveries, and the development of proprietary delivery systems increase competitive pressures on us.

Intellectual Property and Trade Secrets

We regard our domain names and other intellectual property as critical to our success. We rely on a combination of laws and regulations, including via contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets.

Government Regulation and Legal Matters

We are subject to a wide variety of laws, rules, mandates, and regulations, some of which apply or may apply to us as a result of our business, and others of which apply to us for other reasons, such as our status as a publicly-held company or the places in which we operate. Our business is subject to general business regulations and laws, and regulations and laws specifically governing the internet, e-commerce, and other financial products and services we offer or may offer. Existing and future laws and regulations, directives (including executive orders) and changing enforcement priorities, may result in increasing expenses and may impede our growth. Applicable and potentially applicable regulations and laws include without limitation regulations and laws regarding taxation, business licensing or certification requirements, advertising practices, online services, the use of cryptocurrency, intellectual property rights, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties, privacy, consumer and data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, employment, import and export matters including tariffs and the importation of specified or proscribed items and importation quotas, information reporting requirements, access to our services and facilities, the design and operation of websites, health, safety, and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices.

From time to time, we receive claims and become subject to regulatory investigations or other governmental actions, including consumer protection, employment, intellectual property, and other commercial litigation related to the conduct of our business. We periodically prosecute lawsuits to enforce our legal rights. These matters and other types of claims could result in legal expenses, fines, adverse judgments or settlements and increase the cost of doing business. They could also require us to change our business practices in expensive and significant ways. In addition, litigation could result in legal outcomes or interpretations of the law that may limit our current or future business, require us to change our business practices, or increase our costs or otherwise adversely impact our business.

For further information, see (Item 1A—"Risk Factors") and the information set forth under Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 15—Commitments and Contingencies, *Legal proceedings and contingencies*, contained in the "Notes to Consolidated Financial Statements" of this Annual Report.

Human Capital Management

On December 31, 2024, we had approximately 610 full-time employees. We have never had a work stoppage and none of our employees are represented by a labor union. We consider our employee relations to be good. Competition for qualified personnel in our industry is high. Beyond places great value on its human capital management and knows its people are critical to driving the business to success. We focus on our human capital management in many ways, including the following.

Inclusion & Belonging

We embrace inclusion and belonging and collaboration in our workforce, our ways of thinking, and our decision-making. We know that fostering an inclusive culture delivers better business outcomes. We are committed to creating a workplace that values and celebrates the unique backgrounds, perspectives, and experiences of our employees. Our commitments to improving workplace practices include: (1) increasing employee engagement of our team at all levels, (2) continuing real and meaningful gender and race dialogue within our Company, (3) valuing the varied and broad voices of our employees, (4) fostering inclusion and safety within our workforce, (5) continuing to condemn all forms of discrimination and harassment, (6) encouraging our employees to vote by utilizing their flexible time away or voting time off, and (7) fostering an inclusive work environment where every employee feels valued and respected. Among the many ways we demonstrate these commitments are through our hiring and development practices, flexible and working-parent-friendly programs, anti-discrimination policies, a focus on pay equity, and promoting mentorship programs to support career growth for all employees.

We view inclusion and belonging as a competitive advantage that drives innovation, creativity, and success. We are dedicated to creating a workplace where everyone has the opportunity to thrive, and we believe that our commitment to inclusion and belonging will contribute to our long-term growth and sustainability. Through our commitments, actions, words, investments, and values, we promote a work environment that enables employees to feel safe to express their ideas and perspectives and feel they belong within our team.

Workforce Compensation & Pay Equity

The total rewards philosophy of Beyond is to create and maintain competitive programs that attract, motivate, develop, and retain employees based on the prevailing industry and geographic labor markets where the Company does business. Our competitive compensation programs consist of cash and non-cash compensation based on relevant pay factors designed to balance market competitiveness and cost containment to incentivize achievement of financial performance goals and business objectives and to aid in retaining human capital. We designed our total rewards to link the market competitiveness of an employee's compensation with overall Company performance, aligning employees' financial interests with the interests of the Company and its stockholders.

Elements of our compensation package for all non-executive employees consists of base salary or wages, short-term bonus incentives to reward the achievement of key financial performance goals and business objectives, and for eligible key contributors, long-term equity incentives that align to the interests of the Company and its stockholders.

We monitor changes in the value of each employee's job annually and adjust base pay and short-term incentives based on a combination of factors, including, but not limited to, employee performance to pre-determined goals and the Company's overall performance against broader financial and operational goals and objectives. We determine external market competitiveness by gathering salary information from professionally managed third-party salary surveys and by determining pay for individual employees based on their skill level, experience, education, and any other relevant compensatory factors. We balance internal pay equity with external pay equity to ensure compensation is fairly and equitably dispersed and in compliance with applicable laws, regulations, or other legal requirements.

Management is committed to the proposition that the total rewards of every employee in pay and benefits are distributed regardless of their race, gender, gender identity, sexual orientation, religion, national origin, color, veteran status, age, or disability. To further this commitment, we define appropriate metrics to track progress.

We offer all employees the ability to save for retirement by matching dollar for dollar up to 6% of their savings into a qualified savings plan up to certain pre-determined limits set by the IRS.

Our intention is to offer every employee fair and equitable cash compensation and competitive non-cash benefits to help employees manage the wealth, health, and wellness of both themselves and their families.

Talent Acquisition & Retention

We work diligently to attract the best talent from a diverse range of sources. We prioritize hiring local talent in the Salt Lake City market to support the current and future demands of our business. We also recruit talent from twenty-six states across the United States and the Republic of Ireland. We endeavor to establish relationships with universities, professional associations, and industry groups to proactively attract talent. We look for ways to improve our recruiting process regularly and ensure each applicant feels welcome and comfortable through the recruiting process. Our panel interviews are set up with a diverse group of interviewers to ensure for the best candidate experience.

We have a strong employee value proposition that leverages our culture, shared alignment to critical business and financial objective and goals, collaborative and flexible working environment, shared sense of purpose, desire to do the right thing and innovative work to attract talent to our company. We empower employees to find new and better ways of doing things and the scale of our business means that careers can develop in exciting and unexpected directions. To ensure the long-term continuity of our business, we actively manage the development of existing talent to fill the roles that are most critical to the on-going success of our Company.

Our employees have an average tenure of seven years overall, with an average tenure of six and a half years in our customer service and warehouse departments.

Employee Safety & Wellness

Creating a culture where all employees feel supported and valued is a key part of our Company mission. We continue to evolve our programs to meet our employees' wealth, health, and wellness needs, which we believe is essential to attract and retain employees of the highest caliber, and we offer a competitive benefits package focused on fostering work/life integration. We offer comprehensive benefit options to our employees and their families to live healthier and more secure lives. Some of the various insurances we offer include medical, dental, and vision, among others, along with health savings accounts, flexible

spending accounts and generous 401(k) matching and employee stock purchase plan (ESPP) programs. In addition to these more traditional benefits offerings, we also expanded our employee assistance program (EAP) to better align with our national employee base. We offer family planning services including fertility coverage to assist potential parents. We offer paid parental leave for all new parents who have been with the Company for at least 90-days to ensure they are able to adjust. We also offer a caregiver benefit to parents who need to travel for work, which allows employees who have a child under the age of two to travel with the employee. In 2024, we expanded our benefits to include a flexible work schedule by offering flexible time away (unlimited) to all exempt employees, to allow our employees maximum flexibility and trust in our performance-based culture. Additionally, we launched an employee volunteer program, We Go Beyond, pursuant to which each full-time employee spends at least 32 hours a year of work time volunteering for an organization of choice in their community.

Development & Training

We recognize how important it is for our employees to develop and progress in their careers. We provide a variety of resources to help our employees grow in their current roles and build new skills, including online development resources from a competency model development library to hundreds of online courses in our learning management system. We emphasize individual development planning as part of our annual goal setting process, and offer mentoring programs, along with change management and project management upskilling opportunities. We have leadership development resources for all leaders across the organization and continue to build tools for leaders to develop their teams on the job and in roles to create new opportunities to learn and grow. We also encourage higher education and continuing professional education by subsidizing these opportunities for our employees.

Company Culture

We attribute the high levels of employee engagement to our corporate culture. We strive for a work environment that is performance-based, results-driven, inclusive, agile, and collaborative. Our corporate vision, mission, values, leadership principles, and employee qualities help define who we are, where we are going, and the behavior we expect of the Company and our employees to be successful in the organization.

Our values articulate our commitment to an inclusive, outcome-driven work environment, and embody our "becoming" culture and spirit. Our three leadership principles guide our interactions with colleagues, creating a psychologically safe environment for productive and collaborative exchanges for improved outcomes. We strive to clearly define, look for, measure, and develop ten qualities in our employees so that we all become empowered to be effective and valuable contributors in the organization. We believe this culture allows us to attract, develop, engage, and retain highly qualified employees for each role in the organization. Our goal is for every employee to feel they are a valued and empowered member of a winning team, doing meaningful work, in an environment of trust. The Company endeavors to regularly reinforce this culture throughout the entire employee experience.

Oversight & Governance

Our focus on human capital management has been a hallmark of the Company for years, understanding that people truly are a Company's most valuable asset, and that culture is an organization's ultimate competitive advantage. Our 401(k) committee meets quarterly to review the plan and determine if any changes need to be made to the portfolio, in order to best serve our employees. Our board of directors dedicates time in quarterly meetings with management to discuss trends in hiring, engagement, and attrition. Our Compensation Committee is actively involved in determining competitive compensation strategies to help us continually improve in attracting, developing, and retaining top talent for our Company.

Information About Our Executive Officers

The following persons were executive officers of Beyond as of February 25, 2025:

Executive Officers	Age	Position
Adrianne Lee	47	Chief Financial & Administrative Officer (Principal Financial Officer and Principal Accounting Officer)
Marcus Lemonis	51	Executive Chairman of the Board of Directors
Dave Nielsen	55	President (Principal Executive Officer)

Adrianne Lee was appointed as our Chief Financial & Administrative Officer in February 2024, and previously served as Chief Financial Officer from March 2020 to February 2024. Prior to joining Beyond, Ms. Lee served as Senior Vice President and CFO of North America RAC from December 2018 to March 2020 and as Vice President—Global Financial Planning and Analysis and Corporate Development at The Hertz Corporation from December 2017 to December 2018.

Marcus Lemonis was appointed as the Executive Chairman of the Board of Directors of Beyond, effective February 20, 2024. Mr. Lemonis joined the Board on October 2, 2023, and has served as Chairman of the Board since December 10, 2023. Mr. Lemonis has served as the Chief Executive Officer and Chairman of the Board of Camping World Holdings, Inc. since 2002.

Dave Nielsen was appointed as our President in June 2024. Prior to that, Mr. Nielsen served as Division Chief Executive Officer, Overstock from February 2024 to June 2024, Interim Chief Executive Officer and President from November 2023 to February 2024, President from May 2019 to November 2023, and Chief Sourcing and Operations Officer from October 2018 to May 2019. Mr. Nielsen served as Chief Executive Officer and board member for Global Access from July 2015 to October 2018. Mr. Nielsen originally joined Beyond in 2009 and previously served as our Senior Vice President of Business Development, Senior Vice President and General Merchandise Manager and Co-President.

Available Information

We make our Annual Report 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 Exchange Act, available free of charge through the Investor Relations section of our main website, www.beyond.com, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC"). The SEC also maintains a website at www.sec.gov that contains reports, proxy and information statements, and other information filed by us. Our Internet Website and the information contained therein or connected thereto are not a part of or incorporated into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should carefully read all of the risk factors below, and in any reports we file with the SEC after we file this Annual Report, before making any decision to acquire or hold our securities.

Risks Relating to Our Company and its Operational, Litigation and Regulatory Environment

We depend on third-party companies to perform functions critical to our business, and any failure or increased cost on their part could have a material adverse effect on our business.

We depend on third-party companies, including third-party carriers, insurers, warranty providers, and a large number of independent fulfillment partners whose products we offer for sale on our Website, to perform functions critical to our business and our ability to deliver products and services to our customers on time and at a reasonable cost. We depend on our carriers, insurers, warranty providers, and fulfillment partners to perform traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers, delivering purchased merchandise on a timely and cost-effective basis, insuring the products, and offering warranty services associated with products. We also depend on the delivery and product assembly services that we and they utilize, on the payment processors that facilitate our customers' payments for their purchases, and on other third parties (including SaaS, IaaS, and other cloud-based third-party service providers) over which we have no control, for the operation of our business. Difficulties with any of our significant fulfillment partners or third-party carriers, insurers, warranty providers, delivery or product assembly services, payment processors or any of the third-party service providers involved in our business, regardless of the reason, could have a material adverse effect on our financial results, business and prospects.

We face intense competition and may not be able to compete successfully against existing or future competitors.

The online retail market is evolving rapidly and is intensely competitive. Barriers to entry can be minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including:

- online retailers with or without discount departments, including Amazon.com, AliExpress (part of the Alibaba Group), eBay, Temu, and Rakuten.com;
- online shopping services, including Google Shopping, Facebook, Instagram, and TikTok;
- online specialty retailers such as Wayfair, Build.com, Houzz, Hayneedle, Rugs.com, Groupon, and World Market;
- furniture specialists including Bob's Discount Furniture, Havertys, Raymour & Flanigan, At Home, Tuesday Morning, Living Spaces, Nebraska Furniture Mart, RC Willey, and Rooms To Go;
- traditional general merchandise and specialty retailers and liquidators including Ashley Furniture, Best Buy, Big Lots, Costco, Crate and Barrel, Ethan Allen, Gilt, Home Depot, HomeGoods, Hudson's Bay Company, IKEA, J.C. Penney Company, Kirkland's, Kohl's, Lands' End, Lowe's, Macy's, Nordstrom, Pottery Barn, Arhaus, RH, Ross Stores, Saks Fifth Avenue, Sears, T.J. Maxx, Target, Walmart, West Elm, and Williams-Sonoma, all of which also have an online presence; and
- online liquidators such as SmartBargains.

We expect that existing and future traditional manufacturers and retailers will continue to add or improve their e-commerce offerings, and that our existing and future e-commerce competitors, including Amazon, will continue to increase their offerings, their delivery capabilities, and the ways in which they entice and enable shoppers to purchase goods, including their mobile technology and the voice-activated shopping services offered by Amazon. Further, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular. We may not be able to place our products on these sites to take advantage of their internal search platforms and some shoppers may begin their searches at these websites rather than utilize traditional search engines at all. Many of our competitors specialize in one or more of the areas in which we offer products. For example, our furniture offerings compete with numerous retail furniture websites

and traditional furniture retail specialists. We also face competition from shopping services such as Google Shopping, which offers products from Walmart, Costco, Target and many other retailers. Competition from our competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition, greater access to capital and significantly greater financial, marketing and other resources than we do, affects us and has had and could continue to have a material adverse effect on our financial results, business and prospects.

We may not timely identify or effectively respond to consumer needs, expectations or trends, which could adversely affect our relationship with our customers, the demand for our products and services, and our market share.

The success of our business depends in part on our ability to identify and respond promptly to evolving trends in demographics, shifts in consumer preferences, expectations and needs, changes in the macroeconomic environment, and unexpected weather conditions, natural disasters, or public health issues (including pandemics and related impacts) that impact our customers, while also managing appropriate inventory levels and maintaining an excellent customer experience. It is difficult to successfully predict the products and services our customers will demand. As our customers expect a more personalized experience, our ability to collect, use, retain, and protect relevant customer data is important to our ability to effectively meet their expectations. Our ability to collect and use that data, however, is subject to a number of external factors, including the impact of legislation or regulations governing data privacy, data-driven technologies such as artificial intelligence, and data security, as well as customer expectations around data collection, retention, and use. In addition, each of our primary customer groups has different needs and expectations, many of which evolve as the demographics in a particular customer group change. Customer preferences and expectations related to sustainability of products and operations are also changing. In addition, as the impacts of COVID-19 have subsided, customers have shifted more of their spending back to travel, dining and other experiences, compared to the historic levels of home improvement spending we saw during the heights of the pandemic. If we do not successfully differentiate the shopping experience to attract our customers and meet their individual needs and expectations, it may adversely impact our sales and our market share.

Customer expectations about the methods by which they purchase and receive products or services are also becoming more demanding. Customers routinely and increasingly use technology and a variety of electronic devices and digital platforms to rapidly compare products and prices, read product reviews, determine real-time product availability, and purchase products, and new channels and tools to expand the customer experience appear and change rapidly. We must continually anticipate and adapt to these changes in the shopping and purchasing process by continuing to adjust and enhance the customer experience as well as our delivery options. We cannot guarantee that our current or future fulfillment options will be maintained and implemented successfully or that we will be able to meet customer expectations on delivery or pickup times, options and costs.

Failure to provide a relevant and effective customer experience in a timely manner that keeps pace with technological developments and dynamic customer expectations, preferences, and trends or to differentiate the customer experience could adversely affect our relationship with our customers, the demand for our products and services, and our market share.

Our business depends on effective marketing, including marketing via email, search engine marketing, influencer marketing, and social media marketing. Our competitors have and may continue to cause us to increase our marketing costs and decrease certain other types of marketing, and have and may continue to outspend us on marketing or be more efficient in their spend.

We depend on effective marketing and inflow of customer traffic. We depend on search engine marketing, email, and other e-commerce marketing methods to promote our site and offerings and to generate a substantial portion of our revenue. If a significant portion of our target customers no longer utilize email, or if we are unable to effectively and economically deliver email or marketing materials through other channels to our potential customers, whether for legal, regulatory or other reasons, it would have a material adverse effect on our business. For example, some email services have features that organize incoming emails into categories and such categorization or similar inbox organizational features may result in our emails being delivered in a less prominent location in a customer's inbox or viewed as "spam" by our customers and may reduce the likelihood of that customer opening our emails. Actions by third parties to block, impose restrictions on or charge for the delivery of emails or other messages could also adversely impact our business. From time to time, Internet service providers or other third parties may block bulk email transmissions or otherwise experience technical difficulties that result in our inability to successfully deliver emails or other messages to third parties.

We also rely on social media and influencers for marketing purposes, and anything that limits our ability or our customers' ability or desire to utilize social media could have a material adverse effect on our business, including changes to the terms of social networking services to limit promotional communications, any restrictions that would limit our ability or our customers' ability to send communications through their services, disruptions or downtime experienced by these social

networking services, or decline in or cessation of the use of or engagement with social networking services, including due to legislation, regulation, or directives (including executive orders).

In addition to competing with us for customers, suppliers, and employees, our competitors have and may continue to directly increase our operating costs, by driving up the cost of various forms of online advertising. Furthermore, our competitors may outspend us or be more efficient on various forms of advertising or marketing, making our marketing efforts less effective. We may elect to decrease our use of search engine marketing or other forms of marketing from time to time in order to decrease our costs, which may have a material adverse effect on our financial results and business. We may also elect to spend additional amounts on search engine marketing or other forms of marketing from time to time in order to increase traffic to our Website, or to take other strategic actions to increase traffic and/or conversion, and such increased spending may not be effective on a cost-benefit basis, or at all. If we are unable to develop, improve, implement and maintain effective and efficient cost-effective advertising and marketing programs, it would have a material adverse effect on our financial results and business.

Economic factors, including recessions, other economic downturns, inflation, our exposure to the U.S. housing market, and decreases in consumer spending, have affected and could continue to adversely affect us.

Various economic conditions, including recessions, other economic downturns, inflation, weaknesses in the U.S. housing market, and decreased consumer discretionary spending have adversely affected and could further adversely affect our financial performance. We believe that our sales of home-related products are affected by the strength of the U.S. housing market and overall consumer sentiment on discretionary goods. Recessions or other economic downturns, in particular in the U.S. housing market, have negatively impacted our sales in the past, and could have a material adverse effect on our financial results, business, and prospects in the future. Similarly, a substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macroeconomic conditions that impact consumer spending, including discretionary spending. Difficult macroeconomic conditions also impact our customers' ability to obtain consumer credit and therefore their purchasing power. Other factors, including consumer confidence in the economy, employment levels, interest rates, inflation, fuel and energy costs, tax rates, and consumer debt levels could reduce consumer spending or change consumer purchasing habits. Any of the foregoing could have a material adverse effect on our financial results, business, and prospects.

Tariffs, bans, or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers or fulfillment partners import into the United States could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China and other countries. President Donald J. Trump has advocated for greater restrictions on international trade in general, including increased tariffs on certain goods imported into the United States, particularly from China. If the United States imposes tariffs or bans on imports, or if other factors that are outside of our control increase the prices of imported products sold on our Website or limit our ability to access products sold on our Website, the increased prices and/or supply chain challenges could have a material adverse effect on our financial results, business and prospects.

Our changing business model and use of the Overstock brand, Bed Bath & Beyond brand, Zulily brand, and Beyond brand, could negatively impact our business.

Our business has undergone a number of changes in the recent past, including our company name changing from Overstock.com, Inc. to Beyond, Inc., our purchase of the Bed Bath & Beyond and Zulily brands, changing our company ticker symbol from OSTK to BYON, and transferring the listing of our common stock from the Nasdaq Stock Market LLC to the New York Stock Exchange. These changes, along with others, may cause negative impacts to our business, including customer and stockholder confusion about our brands, the need for higher promotional discounting or marketing costs to acquire and maintain customers, diversion of the attention of management or key personnel, employee fatigue resulting from implementation efforts, disruptions to existing business relationships, and other unforeseen costs, expenses, losses, disruptions, delays, or negative impacts that could have a material adverse effect on our financial results, business and prospects.

The changing job market, the changes in our leadership team, the change in our compensation approach, changing job structures, or any inability to attract, retain and engage key personnel could affect our ability to successfully grow our business.

Our performance is substantially dependent on the continued service and performance of our senior management, our board of directors, and other key personnel. In 2024, we underwent significant changes to our executive management team and board of directors, structural changes to our organization, and changes to our workforce with reductions in force. Additionally, in 2024, we adjusted our approach to our executives' equity compensation from a fully time-based approach to a fully performance-based approach.

With many businesses allowing employees to work remotely, we are forced to compete with businesses in other locations and states to attract and retain key employees. We recently sold our corporate headquarters and announced that local employees will be asked to increase their onsite work from three days each week to four days each week at a new location. We also announced the elimination of our 9-80 schedule (where employees were permitted to work nine-hour days, rather than standard eight-hour days, and take every other Friday off from work). Changes in leadership, structural changes to our organization, reductions in force, changed approach to performance-based compensation, and changes in job structures could create consequences such as a lack of or decreased productivity, a lack of engagement, employee dissatisfaction, and employee fatigue, any of which could impair our ability to recruit, hire, and retain employees. Our success depends on our ability to identify, attract, recruit, hire, train, engage, retain, and motivate highly-skilled personnel necessary to successfully operate our business. Our failure to do any of the foregoing could have a material adverse effect on our financial results, business and prospects.

We rely upon paid and natural search engines to rank our product offerings, and our financial results may suffer if we are unable to maintain our prior rankings in natural searches.

We rely on paid and natural search engines to attract consumer interest in our product offerings, including Google, Bing, and Yahoo!. Changes to their ranking algorithms and competition from other retailers to attract consumer interest may adversely affect our product offerings in paid and/or natural searches. Search engine companies change their natural search engine algorithms periodically and online retailers compete to rank well with these search engine companies. Our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time, which has led us to pursue revenue growth in other more expensive marketing channels. Google's search engine is dominant in our business and has historically been a significant source of traffic to our website. Search engine companies may also determine that we are not in compliance with their guidelines from time to time, as has occurred in the past, and they may penalize us in their search algorithms as a result. In recent years, we have experienced declines in our rankings in Google's natural search engine, which has required us to utilize more expensive marketing channels or otherwise compensate for the loss of some of the natural search traffic. Any future declines in our rankings in Google's natural search engine could have a material adverse effect on our business.

If we are not profitable and/or are unable to generate sufficient positive cash flow from operations, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so.

At December 31, 2024, our accumulated deficit was $740.5 million. We experienced significant losses in years leading up to 2020. Although our financial results were significantly better in 2020 and 2021, we incurred additional losses in 2022 through 2024, which included significant non-cash losses on our equity method investments and a write-down loss on our corporate headquarters. If we are unable to successfully manage our business in the future, our ability to continue in business could depend on our ability to raise sufficient additional capital, obtain sufficient financing, or sell or otherwise monetize significant assets. Additionally, we may not be able to raise capital on acceptable terms or at all. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

Our business depends on the Internet, our infrastructure and transaction-processing systems, and catastrophic events could adversely affect our operating results.

We are completely dependent on our infrastructure and on the availability, reliability and security of the Internet and related systems. Although we have migrated and continue to migrate some of our computer systems and operations to the public cloud, a substantial majority of our computer and communications infrastructure is running in our private cloud on hardware that is located at a single facility, which we sold on December 20, 2024. As part of the sale, we entered into a lease agreement that allows us to continue to occupy and use the data center at the facility.

Our systems and operations, and those of the third parties that we rely on, are vulnerable to damage or interruption from natural disasters or extreme weather events (such as earthquakes, floods, fires and droughts), including those related to, or exacerbated by, climate change, other types of fires or floods, power loss, telecommunications failure, software or hardware malfunctions, terrorist attacks, cyberattacks, acts of war, break-ins, and similar events. The adverse effects of any such catastrophic event would be exacerbated if experienced at the same time as another unexpected and adverse event, such as a pandemic. Current events, including political events, social activism, tension and potential for violence, may impact our workforce, customers, properties and the communities where we operate. If our customers and employees do not perceive our response to be appropriate or adequate for a particular region or for our company as a whole, we could suffer damage to our reputation and brand, which could adversely affect our business. As a consequence of these or other catastrophic events, we may experience interruption to our operations or losses of property, equipment and/or inventory, which could adversely affect our revenue and profitability.

Our back-up facility by itself is not adequate to support fulfillment of sales orders. Our servers and applications are vulnerable to malware, physical or electronic break-ins, internal sabotage, and other disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. Any internal or critical third-party system interruption that results in the unavailability of our websites or our mobile app or reduced performance of our transaction systems could interrupt or substantially reduce our ability to conduct our business. We have experienced periodic systems interruptions due to server failure, application failure, power failure and intentional cyberattacks in the past, and may experience additional interruptions or failures in the future. Any failure or impairment of our infrastructure or of the availability of the Internet or related systems caused by any source, including the housing or maintenance of our hardware by a third party (including the purchaser of the facility where it is now located), or any inability to access or protect our hardware in a timely manner, could have a material adverse effect on our financial results, business and prospects. In addition, the occurrence of any event that would adversely affect e-commerce or discourage or prevent consumers from shopping online or via mobile apps could significantly decrease the volume of our sales.

Compliance with ever-evolving federal, state, and foreign laws and other requirements relating to the handling of information about individuals necessitates significant expenditure and resources, and any failure by us, our vendors or our business partners to comply may result in significant liability, negative publicity, and/or an erosion of trust, which could materially adversely affect our business, results of operations, and financial condition.

In connection with running our business, we receive, store, use and otherwise process information that relates to individuals and/or constitutes "personal data," "personal information," "personally identifiable information," or similar terms under applicable data privacy laws (collectively, "Personal Information"), including from and about actual, former and prospective customers as well as our employees and business contacts. We also depend on a number of third party vendors in relation to the operation of our business, a number of which process Personal Information on our behalf. In addition, we share Personal Information with, and obtain Personal Information from, certain business partners pursuant to commercial arrangements.

We, our vendors and our business partners are subject to a variety of federal, state and foreign data privacy laws, rules, regulations, industry standards and other requirements. These requirements, and their application, interpretation and amendment are constantly evolving. It is also possible that new laws, regulations and other requirements, or amendments to or changes in interpretations of existing laws, regulations and other requirements, may require us to incur significant costs, implement new processes, or change our handling of information and business operations, which could ultimately hinder our ability to grow our business by extracting value from our data assets. For example, in the United States, the Federal Trade Commission and state regulators enforce a variety of data privacy issues, such as promises made in privacy policies or failures to appropriately protect information about individuals, as unfair or deceptive acts or practices in or affecting commerce in violation of the Federal Trade Commission Act or similar state laws.

In addition, in recent years, certain states have adopted or modified data privacy and security laws and regulations that may apply to our business. For example, the California Consumer Privacy Act ("CCPA") requires businesses that process personal information of California residents to, among other things: provide certain disclosures to California residents regarding the business's collection, use, and disclosure of their personal information; receive and respond to requests from California residents to access, delete, and correct their personal information, or to opt-out of certain disclosures of their personal information; and enter into specific contractual provisions with service providers that process California resident personal information on the business's behalf. The enactment of the CCPA is prompting a wave of similar legislative developments in other states in the United States, which creates a patchwork of overlapping but different state laws. For example, since the

CCPA went into effect, numerous state laws that share similarities with the CCPA are now in effect. Similar laws have been proposed in many other states and at the federal level as well.

Additionally, laws, regulations, and standards covering marketing, advertising, and other activities conducted by telephone, email, mobile devices, and the internet may be or become applicable to our business, such as the Telephone Consumer Protection Act (the "TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"), and similar state consumer protection and communication privacy laws. For example, we send text messages to customers as part of our business operations. The actual or perceived improper sending of text messages may subject us to potential risks, including liabilities or claims relating to consumer protection laws such as the TCPA, which imposes significant restrictions on the ability to make telephone calls or send text messages to mobile telephone numbers without the prior consent of the person being contacted.

We may also be subject to international privacy laws such as the European Union General Data Protection Regulation and the UK General Data Protection Regulation, as well as laws and regulations in other jurisdictions. These laws contain significant privacy requirements that may impose restrictions on our ability to collect, use, and otherwise process Personal Information.

Even though we believe we are generally in compliance with applicable laws, rules and regulations relating to privacy and data security, these laws are in some cases relatively new and the interpretation and application of these laws are uncertain. Any failure or perceived failure by us (or in some cases, our vendors and business partners) to comply with data privacy laws, rules, regulations, industry standards and other requirements could result in proceedings or actions against us by individuals, consumer rights groups, government agencies, or others. We could incur significant costs in investigating and defending such claims and, if found liable, pay significant damages or fines or be required to make changes to our business. Further, these proceedings and any subsequent adverse outcomes may subject us to significant negative publicity and an erosion of trust. If any of these events were to occur, our business, results of operations, and financial condition could be materially adversely affected.

If we or our third-party providers experience cyberattacks or data security incidents, there may be damage to our brand and reputation, material financial penalties, and legal liability, which would materially adversely affect our business, results of operations, and financial condition.

We rely on our computer systems, hardware, software, technology infrastructure and online sites and networks and those of our for both internal and external operations that are critical to our business (collectively, "IT Systems"). We own and manage some of these IT Systems but also rely on third parties for a range of IT Systems and related products and services, including but not limited to our suppliers, banks, credit card processors, delivery services, and public cloud providers. We and certain of our third-party providers collect, maintain and process data about customers, employees, business partners and others, including personal information, confidential and proprietary intellectual property, financial information, trade secrets, and other business information (collectively, "Confidential Information").

Our business involves the storage and transmission of Confidential Information, and we face numerous and evolving cybersecurity risks that could threaten the confidentiality, integrity and availability of our IT Systems and Confidential Information, including from diverse threat actors, such as state-sponsored organizations, opportunistic hackers and hacktivists, as well as through diverse attack vectors, such as social engineering or phishing, malware (e.g., ransomware), malfeasance by insiders, human or technological error, and as a result of malicious code embedded in open-source software, or misconfigurations, bugs or other vulnerabilities in commercial software that is integrated into our or our third parties' IT Systems, products or services. Because we make extensive use of third party suppliers and service providers, such as banks, credit card processors, delivery services and cloud services that support our internal and customer-facing operations, successful cyberattacks that disrupt or result in unauthorized access to third party IT Systems can materially impact our operations and financial results. Moreover, we have acquired and continue to acquire companies with cybersecurity vulnerabilities or unsophisticated security measures, which exposes us to significant cybersecurity, operational, and financial risks. Remote and hybrid working arrangements at our company (and at many third-party providers) also increase cybersecurity risks due to the challenges associated with managing remote computing assets and security vulnerabilities that are present in many non-corporate and home networks. Additionally, any integration of artificial intelligence in our or any service providers' or business partners' operations, products or services is expected to pose new or unknown cybersecurity risks and challenges.

Cyberattacks are expected to accelerate on a global basis in frequency and magnitude as threat actors are becoming increasingly sophisticated in using techniques and tools—including artificial intelligence—that circumvent security controls, evade detection and remove forensic evidence. As a result, we may be unable to detect, investigate, remediate or recover from

future attacks or incidents, or to avoid a material adverse impact to our IT Systems, Confidential Information or business. There can also be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our IT Systems and Confidential Information. Furthermore, given the nature of complex systems, software and services like ours, and the scanning tools that we deploy across our networks and products, we regularly identify and track security vulnerabilities. We are unable to comprehensively apply patches or confirm that measures are in place to mitigate all such vulnerabilities, or that patches will be applied before vulnerabilities are exploited by a threat actor.

We and certain of our third-party providers and business partners have experienced a variety of cyber-attacks, which have increased in number and variety over time. Any adverse impact to the availability, integrity or confidentiality of our IT Systems or Confidential Information can result in significant legal and financial exposure (such as class actions), regulatory investigations, damage to our reputation that cause us to lose existing or future customers, a loss of confidence in our security measures, and significant incident response, system restoration or remediation and future compliance costs, any of which could have a material adverse effect on our financial results, operations results, and business. Moreover, any insurance coverage we may carry may be inadequate to cover the expenses and other potential financial exposure we could face due to a cyber-attack or data breach and there can be no assurance that applicable insurance will be available to us in the future on economically reasonable terms or at all.

Moreover, as we accept debit and credit cards for payment, we are subject to the Payment Card Industry Data Security Standard ("PCI-DSS"), issued by the Payment Card Industry Security Standards Council. PCI-DSS contains compliance guidelines with regard to our security surrounding the physical and electronic storage, processing and transmission of cardholder data. If we are unable to comply with the security standards established by banks and the payment card industry, we may be subject to fines, restrictions and expulsion from card acceptance programs, which could materially and adversely affect our business.

We are subject to payment-related risks that could increase our operating costs, expose us to fraud or theft, subject us to potential liability, and potentially disrupt our business.

We accept or have accepted payments using a variety of methods, including credit and debit cards, electronic payments, digital wallets, loan programs including installment loans, and gift cards, and we may offer new payment options over time. Acceptance of these payment options subjects us to rules, regulations, contractual obligations and compliance requirements, including payment network rules and operating guidelines, data security standards and certification requirements, and rules governing electronic funds transfers. These requirements may change over time or be reinterpreted, making compliance more difficult, costly, or uncertain. For certain payment methods, including credit and debit cards, we pay interchange fees and other costs to accept these payments, and we may also incur losses, all of which may increase over time and raise our operating costs. We rely on third parties to provide payment processing services, including the processing of credit cards, debit cards, and other forms of electronic payment. If these companies become unable to provide these services to us, or if their systems are compromised, it could potentially disrupt our business. The payment methods that we offer, and the selling channels in which we operate, also subject us to potential fraud and theft by threat actors, who are becoming increasingly more sophisticated, seeking to obtain unauthorized access to or exploit weaknesses that may exist in our sales, payments and payment processing systems. If we fail to comply with applicable rules or requirements for the payment methods we accept, or if payment-related data is compromised due to a breach or misuse of data, we may be liable for costs incurred by payment card issuing banks and other third parties or we may be subject to fines and higher transaction fees, or our ability to accept or facilitate certain types of payments may be impaired. In addition, our customers could lose confidence in certain payment types, or may expect or demand payment methods that we do not currently offer, which could result in competitive disadvantages or require a shift to other payment types or potential changes to our payment systems that may result in higher costs. As a result, our business and operating results could be adversely affected.

We have significant deferred tax assets and may not be able to realize these assets in the future.

We have established a valuation allowance for our net deferred tax assets, primarily due to recent operating losses, forecasted near-term losses, and uncertainty regarding our future taxable income. Determining whether a valuation allowance for deferred tax assets is appropriate requires judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of a valuation allowance against deferred tax assets. We intend to maintain a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of the allowance.

We may be required to recognize losses relating to our equity method investments.

At December 31, 2024, we held equity method investments totaling approximately $78.2 million. The underlying equity interests are in entities that are in the startup or development stages. Equity method interests are inherently risky because we do not have the ability to influence the business decisions underlying those investments and because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. Since these investments are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. We have recognized losses related to these equity method securities in the past and may in the future recognize additional losses. Additionally, due to tax law limitations around deductibility of capital and investment losses, we may not be able to recognize a tax benefit on these losses when they occur. Any such loss could be material and could have a material adverse effect on our financial results.

If governmental entities or providers of consumer devices and internet browsers further restrict or regulate the use of "cookie" tracking technologies, the amount or accuracy of online user information we collect could decrease, which could harm our business and operating results.

Various federal, state and international governmental entities have enacted or are considering enacting legislation or regulations that could significantly restrict the ability of companies to use proprietary or third-party "cookies" and other methods of online tracking for behavioral advertising. For example, some governmental agencies have regulated the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented or plan to implement methods of making it easier for Internet users to prevent the placement of cookies, to block other tracking technologies or to require new permissions from users for certain activities, which have impacted us in the past and have the potential to significantly reduce the effectiveness of such practices and technologies in the future. Any further restriction on the use of cookies and other online tracking and advertising practices could lower the quality of the data we collect, negatively impact our targeted marketing capabilities, increase costs associated with developing or transitioning to new technologies or methods, and could impact our ability to compete. Increased restrictions on tracking technologies could also lead to increased compliance, legal, and regulatory risks, increased costs associated with the management thereof, and increased costs associated with potential fines, penalties, claims. defense costs, reputational harm, or other associated costs. Such restrictions on tracking could also limit our ability to effectively retain existing customers or acquire new customers and consequently, materially adversely affect our business, financial condition and operating results.

If the legal, regulatory, or tax treatment of our company changes adversely, it could impact our ability to conduct business and, accordingly, our financial results.

New or revised laws, regulations, or court decisions may subject us to additional requirements and new disclosures that could increase the cost of doing business, increase scrutiny for the way decisions are made, decrease our revenues, increase our expenses, or impact our business model. For example, various jurisdictions around the world have enacted or are considering revenue-based taxes such as digital advertising taxes, data collection taxes, and other targeted taxes, which could lead to inconsistent and potentially overlapping tax regimes that could increase our expenses. Other new or revised legal, regulatory, or tax treatment could expose us to additional risk, increase the cost of doing business online, and increase internal costs necessary to capture data, report data, and collect and remit taxes. Any of these items could have a material adverse effect on our business and financial results.

Failure to comply with, or changes in, laws, regulations and enforcement activities may adversely affect the products, services and markets in which we operate.

From time to time, we are subject to claims, individual and class action lawsuits, arbitration proceedings, government and regulatory investigations, inquiries, actions or requests, and other proceedings alleging violations of laws, rules, and regulations with respect to taxation, advertising practices, online services, intellectual property rights, privacy, consumer and data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, employment (including diversity, equity and inclusion), labor rights, import and export matters including tariffs and the importation of specified or proscribed items and importation quotas, information reporting requirements (including sustainability reporting), access to our services and facilities, the design and operation of websites, health, safety, and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices. There may be changes to the laws, regulation, standards, directives (including executive orders), and enforcement priorities that

affect our operations in substantial and unpredictable ways at the federal and state level in the United States and in other countries in which our services are or may be used. Changes to laws, regulations and standards, including interpretation and enforcement of such laws, regulations and standards could increase the cost of doing business or otherwise change how or where we want to do business. In addition, changes to laws, regulations and standards could affect our merchants and software partners and could result in material effects on the way we operate and the cost to operate our business. Failure to comply with such laws, regulations and standards could result in harm to our members, employees and partners in the supply chain, significant costs to satisfy compliance, remediation or compensatory requirements, or the imposition of severe penalties or restrictions on operations by governmental agencies or courts that could adversely affect our reputation, business, financial condition, and results of operations.

From time to time we are subject to various legal proceedings which could adversely affect our business, financial condition or results of operations.

We are involved in various litigation matters from time to time. For more information regarding our material legal proceedings, please see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 15—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the "Notes to Consolidated Financial Statements" of this Annual Report. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Our insurance or indemnities may not cover all claims that may be asserted against us, and any claims asserted against us, regardless of merit or eventual outcome, may harm our reputation. If we are unsuccessful in our defense in these litigation matters, or any other legal proceeding, we may be forced to pay damages or fines, enter into consent decrees or change our business practices, any of which could adversely affect our business, financial condition and results of operations.

Damage to our reputation or brand image could adversely affect our sales and results of operations.

Our reputation is largely based on public perceptions. Incidents that erode trust or confidence in us could adversely affect our reputation and thereby impact our business, particularly if the incidents result in rapid or significant adverse publicity, protests, litigation, boycotts, governmental inquiries, or other stakeholder responses. This could include incidents regarding our actions or inactions on issues related to corporate social responsibility or environmental, social, and governance ("ESG") matters, and any perceived lack of transparency about such matters. We have established, and may continue to establish, various goals and initiatives on ESG matters, including with respect to sustainability and diversity, equity, and inclusion topics. We cannot guarantee that we will achieve these goals and initiatives. Any failure, or perceived failure, by us to achieve these goals and initiatives could adversely affect our reputation. Further, stakeholder expectations regarding ESG matters continue to evolve and are not uniform, and our pursuit of our goals and initiatives could adversely impact our reputation due to such differing expectations. In turn, damage to our reputation or brand image could, among other things, adversely impact our customer loyalties and sales, our supply chain relationships and business opportunities, our ability to attract and retain talent sufficient to meet business needs, and results of operations. Any of the foregoing can be further exacerbated by changes to laws, regulation, standards, directives (including executive orders), and enforcement priorities. See "*—Failure to comply with, or changes in, laws, regulations and enforcement activities may adversely affect the products, services and markets in which we operate.*"

Regulatory changes or actions may alter the nature of an investment in us or restrict the use of cryptocurrencies and blockchain technology in a manner that adversely affects our business, prospects and operations.

As cryptocurrencies and blockchain technology have grown in both popularity and market size, governments around the world have reacted differently to them, with certain governments deeming them illegal while others have allowed their use and trade. Governments may in the future regulate, curtail or outlaw the ability for acquisition, use or redemption of cryptocurrencies and blockchain technology. Governments may take regulatory action that may increase the cost and/or subject cryptocurrency companies or blockchain technology to additional regulation. Similar actions by governments or regulatory bodies could result in restriction of the acquisition, ownership, holding, selling, use or trading of our securities.

In the United States and certain other jurisdictions, certain cryptocurrencies may be securities and subject to the securities laws of the relevant jurisdictions. If we fail to comply with any relevant laws, regulations or prohibitions that may be applicable to us, we could face regulatory or other enforcement actions and potential fines or other consequences. The rapidly evolving regulatory landscape with respect to cryptocurrency and blockchain technology may subject us to inquiries or investigations from regulators and governmental authorities, require us to make product changes, restrict or discontinue product offerings, and implement additional and potentially costly controls. If we fail to comply with regulations, requirements,

prohibitions or other obligations applicable to us, we could face regulatory or other enforcement actions and potential fines and other consequences.

Cryptocurrencies have in the past and may in the future experience periods of extreme price volatility. Fluctuations in the value of any cryptocurrencies or other digital assets that we might hold could also lead to volatility in our financial results and could have an adverse impact on our business. These uncertainties, including accounting and tax developments, or other requirements relating to cryptocurrency or blockchain technology could expose us to litigation, regulatory action and possible liability, and have an adverse effect on our business.

If we do not successfully optimize and operate our fulfillment center or customer service operations, our business could be harmed.

We have expanded, contracted, and otherwise modified our fulfillment centers, warehouses, and customer service operations from time to time in the past, and expect that we will continue to do so. If we do not successfully optimize and operate our fulfillment center and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. We may not be able to staff at optimal levels or manage our operations in an optimal way, which could result in reduced customer satisfaction and excess or insufficient inventory or warehousing capacity. Our failure to manage our fulfillment center or customer service operations optimally could adversely affect our financial results and customer experience and could have a material adverse effect on our financial results, business and prospects.

If we fail to effectively utilize technological advancements, including in artificial intelligence, our business and financial performance could be negatively impacted.

Our industry is highly competitive and is undergoing rapid changes due to technological advancement in areas such as artificial intelligence (AI). Our future success depends in part on our ability to effectively utilize these technological advancements. Our competitors may outpace us in incorporating AI into their product offerings and engagement with customers, which could affect our competitiveness and operational outcomes. Our efforts to utilize these technological advancements may not be successful, may result in substantial integration and maintenance costs, and may expose us to additional risks. For example, Personal Information that may be used in relation to AI could subject us to data privacy and cybersecurity risks. For more information, see "*Risks Relating to Our Company and its Operational, Litigation, and Regulatory Environment*." Additionally, the content, analyses, or recommendations generated by AI programs, if deficient, inaccurate, or biased, could adversely impact our business, financial condition, and operational results, as well as our reputation. Moreover, ethical concerns associated with AI could lead to brand damage, competitive disadvantages, or legal repercussions. Any problems with our implementation or use of AI or other technological advancements could negatively impact our business or results of our operations.

Global conflict could negatively impact our business, results of operations, and financial condition.

Global conflict could increase costs and limit availability of fuel, energy, and other resources we depend upon for our business operations and could also limit product assortment availability. For example, while we do not operate in Russia or Ukraine, the tensions between the United States and Russia and the other effects of the ongoing conflict in Ukraine, have resulted in many broader economic impacts such as the United States imposing sanctions and bans against Russia and Russian products imported into the United States. Such sanctions and bans have impacted and may continue to impact commodity pricing such as fuel and energy costs, making it more expensive for us and our partners to deliver products to our customers. Conflict in the Middle East has resulted in reduced access to shipping ports, which in turn has increased shipping times and costs. Further, we and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China. Relations between the United States and China have become increasingly strained and if tensions were to escalate, it could limit or delay our ability to provide a full assortment of furniture and home furnishings on our Website. Sanctions, bans, trade restrictions, or other economic actions in response to present or future conflicts could result in an increase in costs, further disruptions to our supply chain, and a lack of consumer confidence resulting in reduced demand. Any of the foregoing could negatively impact our business, results of operations, and financial condition.

We are partially self-insured with respect to our employees' health insurance. If the actual costs of these claims exceed the amounts we have accrued for them, we would incur additional expense.

Since January 1, 2017, we have been partially self-insured with respect to our employees' health insurance, except to the extent of stop-loss coverage that limits our losses both on a per employee basis and an aggregate basis. The actual costs of

our employees' health insurance claims could exceed our estimates of those costs for a number of reasons, including more claims or larger claims than we expect, and increases in the costs of healthcare generally. If the actual cost of our employees' health insurance claims and related expenses exceeds the amounts we have accrued, we may be required to record additional charges for these claims and/or to establish additional cash reserves, which could have a material adverse effect on our financial results, business and prospects.

We may be unable to protect our proprietary technology and to obtain trademark protection for our marks.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We rely on a combination of laws, regulations, and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property or trade secrets without authorization. In addition, we cannot ensure that others will not independently develop similar intellectual property. Third parties have in the past recruited and may in the future recruit our employees who have had access to our proprietary technologies, processes and operations. These recruiting efforts expose us to the risk that such employees and those hiring them will misappropriate and exploit our intellectual property and trade secrets. We may be unable to protect against such risks, in the United States or elsewhere, which could have a material adverse effect on our business. Although we have registered some of our, and are pursuing the registration of other key trademarks in the United States and some other countries, some of our trademarks and trade names may not be eligible to receive registered trademark protection. In addition, effective trademark protection may not be available or we may not seek protection in every country in which we market or sell our products and services, including in the United States. Our competitors might adopt product or service marks like our marks or might try to prevent us from using our marks. Any claim by another party against us, or customer confusion related to our trademarks, or our failure to obtain trademark registration, could have a material adverse effect on our financial results, business and prospects.

We are currently subject to claims that we have infringed intellectual property rights of third parties and may be subjected to additional infringement claims in the future.

We have been in the past and may in the future be subject to claims that we have infringed the intellectual property rights of others, by offering allegedly infringing products or otherwise. We have contested and expect to continue to contest claims we consider unfounded rather than settling such claims, even when we expect the costs of contesting the claims could potentially exceed the cost of settlement. Any claims may result in significant expenditure of our financial and managerial resources and may result in us needing to make significant damages or settlement payments or changes to our business. We could be prohibited from using software or business processes, or required to obtain licenses from third parties, which could be expensive or unavailable. Any such difficulties could have a material adverse effect on our financial results, business and prospects.

Product safety and quality concerns could have a material adverse impact on our revenue and profitability.

If the products we sell fail to meet, or are alleged to fail to meet, applicable safety standards or our customers' expectations regarding safety and quality, we could be exposed to increased legal risk and damage to our reputation. Failure to take appropriate actions in relation to product-related issues (for example, product recalls), could lead to violations of laws and regulations and leave us susceptible to government enforcement actions or private litigation. Recalls of products, particularly when combined with lack of available alternatives or difficulty in sourcing sufficient volumes of replacement products, could also have a material adverse impact on our revenue and profitability.

We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, product compliance with various laws and regulations, including registration and/or reporting obligations, and for proper labeling of products.

We rely on our suppliers' and fulfillment partners' representations of product safety, content and quality, product compliance with various laws and regulations, including registration and/or reporting obligations, and proper labeling of products. Issues or concerns regarding product safety, compliance, registration and/or reporting, labeling, content or quality could result in consumer or governmental claims and could adversely affect our financial results and business. Any indemnity agreement we may have with a supplier or fulfillment partner of a product may be inadequate or inapplicable, and any insurance coverage we may carry may be inadequate. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects.

We have an evolving business model, which increases the complexity of our business.

We are modifying and expanding the types of products and services offered for sale on our websites, may further expand offerings in the future, and we do not know whether any of our modifications or expansions will be successful. From time to time, we have also modified aspects of our business model relating to our product mix and the mix of direct versus partner sourcing of the products offered for sale. Products purchased for direct sale come with additional risks and uncertainties, including costs to maintain inventory, risk of loss from theft or otherwise, and risks associated with the marketing and labeling of products. In addition, we continue to experiment with new technologies to enhance the customer experience and iterate on delivery of new features. The additions and modifications to our business have increased the complexity of our business and have impacted, and may in the future materially impact, our management, personnel, operations, systems, technical performance, financial resources, and internal control and reporting functions. Further, our efforts to right-size our cost structure and create a more flexible technology stack may result in the introduction of technologies that are less mature or stable, which could cause problems in our website or back-end logistics systems or compliance efforts. Further, any new business, products or services, technology, or website we launch that is not favorably received by consumers could damage our reputation and our brand. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business, prospects, and the trading prices of our securities.

Investment in new business strategies, acquisitions, dispositions, partnerships, or other transactions could disrupt our ongoing business, present risks not originally contemplated and materially adversely affect our business, reputation, results of operations and financial condition.

We have invested, and in the future may invest, in new business strategies, acquisitions, dispositions, partnerships, or other transactions. We intend for these initiatives to drive efficiencies and improve margins. Such endeavors may involve significant risks and uncertainties, including distraction of management from current operations, greater-than-expected liabilities and expenses, new claims or litigation, economic, political, legal and regulatory challenges associated with operating in new businesses, regions or countries, inadequate return on capital, unrealized benefits or unanticipated delays in realized benefits, potential impairment of tangible and intangible assets, and significant write-offs. Investment, acquisition, disposition and partnership transactions are exposed to additional risks, including the imposition of onerous conditions that could delay or prevent us from completing a transaction or otherwise limit our ability to fully realize the anticipated benefits of a transaction. Rapid, significant, and disruptive technological changes impact the industries in which we operate or in which we may in the future operate, including in areas such as tokenization, virtual currencies or cryptocurrencies, blockchain technologies, and the success of new business strategies, acquisitions, dispositions, partnerships, or other transactions will depend, in part, on our ability to adapt and respond effectively to these changes. In addition, any new investments or acquisitions may require us to raise additional capital, including debt or equity securities. These transactions may impose additional restrictions on our ability to operate and/or may be dilutive to you. In the event that additional liquidity is required from outside sources, we may not be able to raise the capital on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, financial condition, and results of operations could be adversely affected.

These new ventures are inherently risky and may not be successful. If we do not successfully manage and execute these initiatives, or if they are inadequate or ineffective, we may fail to meet our financial goals and achieve anticipated benefits, improvements may be delayed, not sustained or not realized, and our business, operations and competitive position could be adversely affected.

If Pelion is not successful in managing the Medici Ventures, L.P. fund or has to resign if there is a change in the interpretation or application of the Investment Advisers Act of 1940 (the "Advisers Act"), we would be unable to realize the anticipated benefits of this arrangement.

As the general partner of the Medici Ventures, L.P. fund, Pelion has control over the limited partnership and its activities, including day-to-day operations and investment decisions. Pelion is able to sell investments of the limited partnership at any time, make additional investments, modify, amend or change existing investments, make new investments and otherwise control the activities of the limited partnership.

The success of the Medici Ventures, L.P. fund depends on Pelion's ability to successfully manage the activities of the Medici Ventures, L.P. fund portfolio companies and its existing and future portfolio company investments. Pelion may not be successful in managing these investments and we may not receive the benefits we anticipate of the transaction with Pelion. Moreover, even if successful in managing the Partnership, Pelion has the right to withdraw as general partner under certain circumstances, including certain changes in Pelion's status under the Advisers Act. The occurrence of such an event is beyond

our control, and, as a result, there can be no assurance that Pelion will remain as general partner for the term contemplated. If Pelion is no longer serving as the general partner, we will have the right under the partnership agreement to appoint a new general partner; however, it may not be possible to accomplish this in a timely manner, which could result in the termination of the partnership. Even if a new general partner is appointed in a timely manner, it may be unable to manage the activities of the Medici Ventures, L.P. fund and its portfolio company investments, which would prevent us from receiving the anticipated benefits of the partnership.

Our international business efforts could adversely affect us.

We sell products in international markets and are seeking to expand our international sales. International sales and transactions are subject to inherent risks and challenges that could adversely affect us, including:

- the need to develop new supplier and manufacturer relationships and create new logistics capabilities;
- the need to comply with additional U.S. and foreign laws and regulations;
- changes in international laws, regulatory requirements, taxes and tariffs;
- our limited experience with different local cultures and standards;
- geopolitical events, such as war and terrorist attacks;
- the risk that the products we offer may not appeal to customers in international markets, whether due to the products themselves, the time to deliver, a lack of brand recognition, or another reason; and
- the additional resources and management attention required for such expansion.

Our international business operations could expose us to penalties for non-compliance with laws applicable to international business and trade, including the U.S. Foreign Corrupt Practices Act, which could have a material adverse effect on our business. Foreign data protection, privacy and other laws and regulations are different and often more restrictive than those in the United States. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices, which may adversely affect our business. A lack of brand recognition, increased costs associated with shipping products cross-border, increased times to deliver products to customers, or other matters that may reduce customer demand, could adversely affect our business. To the extent that we make purchases or sales denominated in foreign currencies, we are subject to foreign currency risks, which could have a material adverse effect on our financial results, business and prospects.

We have entered into license agreements granting certain third parties the right to use certain of our trademarks, which could damage our brand and reputation.

We have entered into license agreements with several third parties, pursuant to which we have authorized these licensees to use certain of our trademarks on certain products and certain store locations. Any failure of these third parties to deliver products at of reasonably comparable quality and price to the products we offer in connection with these trademarks, to offer good customer experiences consistent with our brands, or any breach of our licensing agreements by a licensee could negatively impact our objectives, consistency with our brands, could have a material adverse effect on our financial results, business and prospects.

Risks Relating to Our Common Stock

The trading price of our common stock may be adversely affected by short-selling activities involving our common stock.

The trading price of our common stock has been and may continue to be volatile. Our stock price fluctuations may be due in part to short-selling activity related to our common stock. Short selling is the practice of selling securities that the seller does not own, but rather has borrowed or intends to borrow from a third party with the intention of buying identical securities at a later date to return to the lender. A short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. It is therefore in the short seller's interest for the price of the stock to decline, and some short sellers publish, or arrange for the publication of, opinions or characterizations regarding the relevant issuer, often involving misrepresentations of the issuer's business prospects and similar matters calculated to create negative market momentum, which may permit them to obtain profits for themselves as a result of selling the stock short.

As a public entity, we may be the subject of concerted efforts by short sellers to spread negative information in order to gain a market advantage. The practice of short-selling activity may adversely affect our common stock price, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and

prospects. In addition, the publication of misinformation may also result in further lawsuits, the uncertainty and expense of which could adversely impact our business, financial condition, and reputation. There are no assurances that we will not face short sellers' efforts or similar tactics, and the market price of our common stock may decline as a result of their actions.

Significant fluctuations in our quarterly operating results may adversely affect the market prices of our common stock, and you may lose all or a part of your investment.

Our revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control. In addition to the other risk factors described in this report, factors that have caused and/or could cause our quarterly operating results to fluctuate and in turn affect the market prices of our common stock include:

- increases in the cost of advertising and changes in our sales and marketing expenditures;
- our inability to attract new customers and retain existing customers or encourage repeat purchases;
- the extent to which our existing and future marketing campaigns are successful;
- price competition, particularly in the costs of marketing and product pricing;
- the amount and timing of operating costs and capital expenditures;
- the amount and timing of our purchases of inventory;
- our inability to manage distribution operations or provide adequate levels of customer service;
- increases in the cost of fuel, transportation or distribution;
- our inability to implement technology changes or integrate operations and technologies from acquisitions or other business combinations;
- our efforts to offer new lines of products and services;
- our inability to attract users to our website;
- macroeconomic and geopolitical factors; and
- losses associated with our equity method investments.

Any of the foregoing could have a material adverse effect on our financial results and business and our ability to raise capital and could have a material adverse effect on the holders of our common stock.

Future sales or other distributions of our stock may depress our stock price or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

Sales or other distributions of a substantial number of shares of our common stock, in the public market or otherwise, by us or by a significant stockholder, have in the past and could in the future, depress the trading price of our common stock and impair our ability to raise capital through the sale of additional equity securities. The transfer of ownership of a significant portion of our outstanding shares of stock in the public market or otherwise, by us or by a significant stockholder, within a rolling three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income.

In addition, we may issue additional shares of our common or preferred stock from time to time in the future in amounts that may be significant. We have sold common stock including under our "at the market" sales agreement and in follow-on underwritten offerings in the past and may do so in the future. We also previously issued a class of preferred stock that was publicly traded and may in the future issue preferred stock that is publicly traded. The sale of substantial amounts of our common or any preferred stock, by us or a significant stockholder, or the perception that these sales may occur, could adversely affect the trading prices of our securities.

Anti-takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, and provisions of Delaware law, could impair a takeover attempt.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our Board of Directors. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions:

- limiting the ability of our stockholders to call and bring business before special meetings;
- only permitting the Board of Directors to fix the number of directors and to fill vacancies;
- prohibiting cumulative voting in the election of directors;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our Board of Directors; and
- designating a state court located in the State of Delaware as the sole and exclusive forum for specified matters.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock or other securities and could also affect the price that some investors are willing to pay for our common stock or other securities.

We are subject to rules and regulations established from time to time by the SEC and the NYSE regarding our internal control over financial reporting. If we fail to establish and maintain effective internal control over financial reporting and disclosure controls and procedures, we may not be able to accurately report our financial results, or report them in a timely manner.

We are subject to the rules and regulations established from time to time by the SEC and the New York Stock Exchange (the "NYSE"). These rules and regulations require, among other things, that we establish and periodically evaluate procedures with respect to our internal control over financial reporting. For example, we are required to assess the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"). Such reporting obligations place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel.

If we identify material weaknesses in our internal control over financial reporting or if we are unable to comply with the requirements applicable to us as a public company, in a timely manner, including the requirements of Section 404 of the Sarbanes-Oxley Act, we may be unable to accurately report our financial results, or report them within the timeframes required by the SEC. We could also become subject to sanctions or investigations by the SEC or other regulatory authorities. In addition, if we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, when required, investors may lose confidence in the accuracy and completeness of our financial reports, we may face restricted access to the capital markets, and our stock price may be adversely affected.

We are subject to the risk of possibly becoming an investment company under the Investment Company Act.

The Investment Company Act regulates certain companies that invest in, hold or trade securities. Primarily as a result of a portion of our assets consisting of indirectly-held minority investment positions through the Medici Ventures, L.P. fund, we are subject to the risk of inadvertently becoming an investment company. Because registration under the Investment Company Act would make it impractical for us to operate our business, we need to avoid becoming subject to the registration requirements of the Investment Company Act. To do so, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions and/or strategic initiatives due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the value of certain of our holdings or adverse developments with respect to our ownership of certain of our subsidiaries, could result in us inadvertently becoming an investment company. If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company. If it were established that we were an investment company, it would have a material adverse effect on our business and financial operations and our ability to continue our business.

If securities analysts do not continue to publish research or reports about our business or if they downgrade our stock or our sector, or if there is any fluctuation in our credit rating, our stock price and trading volume could decline.

The trading market for common stock relies in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. Securities and industry analysts may not publish research about us. If securities or industry analysts do not continue coverage of us, the trading price of our common stock would likely be negatively impacted. Furthermore, if one or more of the analysts who do cover us downgrade our stock or our industry, or the stock of any of our competitors, or publish inaccurate or unfavorable research about our business, the price of our stock could decline. If one or more of these analysts stops covering us or fails to publish reports on us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

Additionally, any fluctuation in the credit rating of us or our subsidiaries may impact our ability to access debt markets in the future or increase our cost of future debt which could have a material adverse effect on our operations and financial condition, which in return may adversely affect the trading price of shares of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Cybersecurity Risk Management and Strategy

Our company recognizes the critical importance of cybersecurity in our digital operations and has established a risk management program to address both internal and external cybersecurity threats. This program, guided by industry frameworks like NIST CSF and overseen by experienced leadership teams, integrates advanced security tools and practices into our broader enterprise risk management system, actively involving our Executive team and Board of Directors (the "Board") in its oversight. This does not imply that we meet any particular technical standards, specifications, or requirements, only that we use NIST CSF and similar frameworks as a guide to help us identify, assess, and manage cybersecurity risks relevant to our business.

Despite our efforts and resource allocation, we acknowledge the challenges posed by the evolving nature of cyber threats and the limitations in fully mitigating these risks. We have not observed any significant impacts from known cybersecurity threats, including as a result of any previous cybersecurity incidents, that have materially affected our operational results and strategic or financial condition. Criteria used to determine the materiality of an incident includes, but is not limited to, evaluating the scope, nature, type, systems, data, operational impact, and pervasiveness of the incident. Materiality also considers both quantitative and qualitative factors in determining impact. Nevertheless, given the unpredictable nature of cyber threats, we cannot assure that potential future impacts will not have a material impact. See "Risk Factors – *If we or our third-party providers experience cyberattacks or data security incidents, there may be damage to our brand and reputation, material financial penalties, and legal liability, which would materially adversely affect our business, results of operations, and financial condition."*

Key elements of our cybersecurity risk management program include, but are not limited to, the following:

- risk assessments designed to help identify material risks from cybersecurity threats to our critical systems and information;
- a security team principally responsible for managing (1) our cybersecurity risk assessment processes, (2) our security controls, and (3) our response to cybersecurity incidents;
- the use of external service providers, where appropriate, to assess, test or otherwise assist with aspects of our security processes;
- cybersecurity awareness training of our employees, including incident response personnel and senior management;
- a cybersecurity incident response plan that includes procedures for responding to cybersecurity incidents; and
- a third-party risk management process for key service providers based on our assessment of their criticality to our operations and respective risk profile.

Cybersecurity Governance

Our Board of Directors oversees the organization's preparedness for cyber threats as part of its risk oversight function. This involves working to understand our risk profile, reviewing our cybersecurity processes, and maintaining an incident response plan. The Board strives to engage in active participation in continuous cybersecurity strategy improvement. In March 2023, the Board enhanced its cybersecurity expertise with the addition of Joanna Burkey. Ms. Burkey has an extensive cybersecurity background and has served as Chief Information Security Officer (CISO) at both HP and Siemens.

The Audit Committee, designated as the responsible body for risk management and compliance oversight, endeavors to ensures information flow of risk by regularly reporting its activities to the Board, including those related to cybersecurity. Our cybersecurity program is led by our Chief Information Security Officer (CISO), who has over 20 years of experience in the cybersecurity field, and who is primarily responsible for assessing and managing material risks from cybersecurity threats. Their expertise is supported by industry certifications, regular participation in leading advanced training programs, and advisement roles. The CISO leads a dedicated team of security professionals who provide coverage of critical program capabilities. Our CISO and larger cybersecurity risk management team take steps to stay informed about and monitor efforts to prevent, detect, mitigate, and remediate cybersecurity risks and incidents through various means, which may include briefings from internal security personnel; threat intelligence and other information obtained from governmental, public or private

sources, including external consultants engaged by us; and alerts and reports produced by security tools deployed in our IT environment.

Our CISO provides regular reports to the Audit and Technology Committees, senior management, and relevant stakeholders, for the purpose of keeping them informed on evolving cyber threats, ongoing assessments, and any significant findings. This collaborative approach is intended to support informed decision-making, and timely response to potential risks, safeguarding our critical assets and valuable information.

ITEM 2. PROPERTIES

We lease various properties in the United States and internationally. We use our properties for corporate office space, data centers, and warehouse and fulfillment space. As of December 31, 2024, we operated the following facilities (square feet in thousands):

	United States	International	Total
Leased facilities	442	13	455

On December 20, 2024, we consummated the sale of our corporate headquarters located at 799 West Coliseum Way, Midvale, Utah to Salt Lake County, a body corporate and politic of the State of Utah. The transaction included an 18.6 acre parcel of land with improvements including the corporate headquarters building, and the sales price was $52.0 million.

As part of the sale, we negotiated a lease agreement with the buyer that allows us to continue to occupy and use the headquarters' data center, comprising approximately 5,000 square feet within the main building at the headquarters, and permit the data center to continue to be served by the existing building generators. Among other terms, this data center lease has an initial term of five years, subject to our right to terminate upon providing 30 days' notice to the buyer.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, privacy, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to equitable remedies relating to the operation of our business or judgments requiring us to pay significant damages or associated costs. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 15—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, which is incorporated by reference in answer to this Item.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market information

The principal U.S. trading market for our common stock is the New York Stock Exchange. Our common stock is traded under the symbol "BYON."

Holders

As of February 21, 2025, there were 387 holders of record of our common stock. Many of our shares of common stock are held by brokers and other institutions on behalf of the beneficial owners.

Dividends

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends on our common stock in the foreseeable future. Any future determination to pay any dividends on our common stock will be at the discretion of our Board of Directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the Board of Directors deems relevant.

As discussed below under "—Preferred Stock Conversion," we converted all of our then-outstanding Series A-1 and Series B preferred stock into common stock on June 10, 2022, and did not pay a cash dividend prior to conversion in 2022. At December 31, 2024, 2023, and 2022, we had no preferred stock outstanding.

Recent sales of unregistered securities

None.

Issuer purchases of equity securities

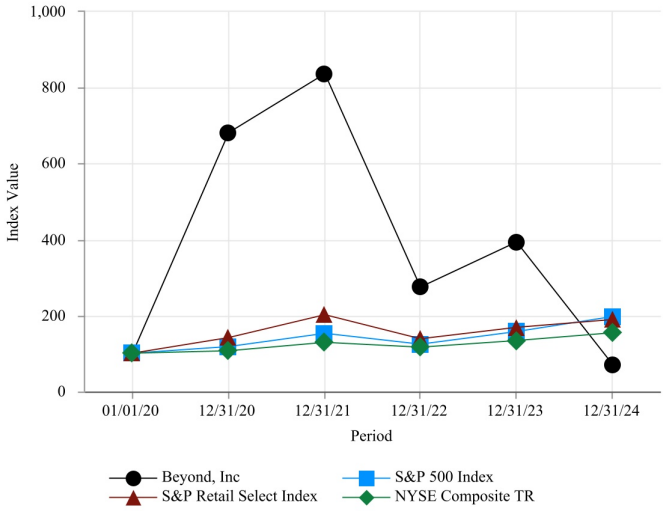
See Note 17—Stockholders' Equity in the "Notes to Consolidated Financial Statements" included in Item 8 of Part II, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K for information regarding our authorized share repurchase program. There were no repurchases made during the three months ended December 31, 2024. As of December 31, 2024, the approximate dollar value of shares that may yet be purchased under the stock repurchase program is $69.9 million.

Preferred Stock Conversion

On May 12, 2022, Beyond stockholders voted to approve separate proposals to approve the amendment of the Company's Amended and Restated Certificate of Designation for both classes of its preferred stock to provide that each share of our Series A-1 and Series B preferred stock would be automatically converted into 0.90 of a share of our common stock (the "Conversion"). On June 10, 2022, in connection with the completion of the Conversion, the Company issued 4,097,697 shares of our common stock in exchange for the outstanding Series A-1 and Series B preferred stock on that date. As the fair value of our common stock issued exceeded the fair value of the Series A-1 and Series B preferred stock exchanged on the Conversion date, we recognized a non-cash deemed dividend to our preferred stockholders of $1.7 million due to the excess fair value per share compared to the conversion ratio. Following the Conversion, the Company eliminated the Series A-1 and Series B preferred stock class by filing Certificates of Elimination with the Delaware Secretary of State. The shares of preferred stock previously designated as Series A-1 and Series B preferred stock returned to the status of authorized and undesignated shares of preferred stock under our certificate of incorporation.

COMPARISON OF 5-YEAR CUMULATIVE TOTAL RETURN

The following graph shows a comparison of the cumulative total stockholder return on our common stock with the cumulative total returns of NYSE Composite TR, the S&P 500 Index, and the S&P Retail Select Index. The graph tracks the performance of a $100 investment in our common stock and in each of the indexes during the last five fiscal years ended December 31, 2024. Data for the NYSE Composite TR, the S&P 500 Index, and the S&P Retail Select Index assume reinvestment of dividends. Stockholder returns over the indicated period are based on historical data and should not be considered indicative of future stockholder returns. They do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of the stock involved, and they are not intended to forecast or be indicative of possible future performance of the Company's common stock.



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ITEM 6.

[Reserved.]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Cautionary Note Regarding Forward-Looking Statements." or in Item 1A under the heading "Risk Factors" or included elsewhere in this Annual Report on Form 10-K. In addition, our future results may be significantly different from our historical results.

Overview

We are an e-commerce affinity marketing company that owns or has ownership interests in various retail brands with the aim of offering a comprehensive array of products and services that enable its customers to unlock their homes' potential through its vast data cooperative. In addition, we also offer an increasing number of add-on services across our platforms, including warranties, shipping insurance, installation services, and access to home loans. We will also be expanding our global loyalty program, Beyond +, to encompass all affiliated entities across our cooperative in order to incentivize customer retention within our growing ecosystem. We currently own Overstock, Bed Bath & Beyond, and Zulily. As used herein, "Beyond," "the Company," "we," "our" and similar terms include Beyond, Inc. and its controlled subsidiaries, unless the context indicates otherwise.

Through our Bed Bath & Beyond brand, we aim to provide an extensive array of home-related products tailored specifically for our target customers - consumers who seek comprehensive support throughout their shopping journey, aspiring to discover quality, stylish products at competitive prices that align with their budget requirements. We regularly refresh our product assortment to reflect the evolving preferences of our customers and aim to stay aligned with current trends. The mission of this brand is to achieve category-leading ownership of four distinct rooms of the home: the bedroom, the bathroom, the kitchen, and the patio, and our goal is for our assortment to include not only core legacy categories like bedding and kitchenware, but also adjacent categories like bedroom and outdoor furniture and rugs. Leveraging an asset-light supply chain, we offer direct shipping to customers from both our suppliers and our leased warehouse.

Bed Bath & Beyond's strategic priorities include assortment curation to elevate product quality levels and improve ease of selection, as well as the addition of aspirational brands to elevate the curated shopping experience. Our goal is to elevate our website and customer engagement by fostering emotional connections, building trust, and delivering compelling, value-driven experiences.

Through our Overstock brand, we aim to provide a wide array of quality goods at discounted prices, and a treasure hunt-like experience for our target customers - consumers who are highly engaged, very accustomed to purchasing online, and actively seeking great deals. The mission of this brand is to delight our customers by offering them deals on products they will love. Our product assortment includes home categories such as indoor and outdoor furniture, rugs, décor, and lighting, as well as lifestyle categories such as jewelry and watches, apparel and accessories, sports and outdoor, and beauty and wellness.

Zulily's primary focus is attracting a loyal customer base with flash sales on women's, children's, and men's apparel, footwear, beauty, and wellness. The Zulily acquisition has provided the opportunity to expand our customer base with a younger demographic that shops more frequently with us than our other Beyond brands. Our marketing mix is also diversified and favors a social-first approach that is less reliant on search engine marketing.

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Our cash and cash equivalents balance decreased from $302.6 million as of December 31, 2023 to $159.2 million as of December 31, 2024, a decrease of $143.4 million, primarily as the result of net cash outflows from operating activities of $174.3 million, payments on long-term debt of $34.8 million, disbursement for Kirkland's notes receivable of $17.0 million, and expenditures for property and equipment of $14.3 million; offset by $51.4 million in proceeds from the sale of our corporate headquarters and $43.0 million in net proceeds from the sales of our common stock pursuant to our "at-the-market" public offering, net of offering costs.

Revenue decreased 11% in 2024 compared to 2023. This decrease was primarily due to an 8% decrease in orders delivered and a 3% decrease in average order value. The decrease in orders delivered was driven by a decline in website visits and conversion influenced in part by a shift in consumer spending preferences and macroeconomic factors impacting consumer sentiment. The decrease in average order value was largely driven by orders mixing into categories with lower average unit retail price.

Gross profit decreased 21% in 2024 compared to 2023 primarily due to a decrease in gross margin. Gross margin decreased to 20.8% in 2024, compared to 23.4% in 2023, primarily due to increased promotional discounting, increased carrier costs, and decreased marketing allowance.

Sales and marketing expenses as a percentage of revenue increased to 17.1% in 2024 compared to 14.4% in 2023, primarily due to increased performance marketing expense and brand advertising.

Technology expenses decreased $2.6 million in 2024 compared to 2023, primarily due to a reduction in staff-related expenses, partially offset by one-time restructuring costs.

General and administrative expenses decreased $16.0 million in 2024 compared to 2023, primarily due to a reduction in staff-related and third-party expenses, partially offset by one-time restructuring costs.

Customer service and merchant fees increased $1.6 million in 2024 compared to 2023, primarily due to normalized service capacity in 2024 after understaffing in the second half of 2023, partially offset by decreased credit card costs driven by a decrease in order volume.

Additional commentary related to macroeconomic trends

We continue to monitor recent macroeconomic trends and geopolitical events, including, without limitation, tariffs, bans, or other measures or events that increase the effective price of products, higher interest rates, inflation, and existing and future laws and regulations, directives (including executive orders). These events have and may continue to negatively impact consumer confidence and consumer spending which have and may continue to adversely affect our business and our results of operations. Due to the uncertain and constantly evolving nature and volatility of these trends and events, we cannot currently predict their long-term impact on our operations and financial results. Nevertheless, as of December 31, 2024, the challenges arising from these events have not adversely affected our liquidity or capacity to service our debt, nor have these conditions required us to reduce our capital expenditures.

Liquidity and Capital Resources

Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity considering the most recent developments driven by macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, tariffs, bans, or other measures or events that increase the effective price of products, and other geopolitical events. We proactively seek opportunities to improve the efficiency of our operations and have in the past and may in the future take steps to realize internal cost savings, including aligning our staffing needs, creating a more variable cost structure to better support our current and expected future levels of operations and process streamlining.

We periodically evaluate opportunities to repurchase our equity securities, obtain credit facilities, or issue additional debt or equity securities, which may impact our future operations and liquidity. In addition, we may, from time to time, consider the investment in, or acquisition of, complementary businesses, products, services, or technologies to expand our business, any of which might affect our liquidity requirements or cause us to issue additional debt or equity securities that would be dilutive to stockholders.

Our future capital requirements will depend on many factors, including, but not limited to, our growth, our ability to execute on our business strategy, our ability to realize the benefits of any investment in new business strategies, acquisitions, or other transactions, and consumer sentiment towards our offerings. In the event that additional liquidity is required from outside sources, we may not be able to raise the capital on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, financial condition, and results of operations could be adversely affected.

Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents, and accounts receivable, net. At December 31, 2024, we had cash and cash equivalents of $159.2 million and accounts receivable, net of allowance for credit losses of $15.8 million.

Cash flow information is as follows (in thousands):

	Year ended December 31,	
	2024	**2023**
Cash provided by (used in):		
Operating activities	$ (174,304)	$ (18,586)
Investing activities	24,926	(44,630)
Financing activities	32,722	(5,492)

On June 10, 2024, we entered into a Capital on Demand™ Sales Agreement (the "Sales Agreement") with JonesTrading Institutional Services LLC ("JonesTrading"), under which we from time to time conduct "at the market" public offerings of our common stock. Under the Sales Agreement, JonesTrading, acting as our agent, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. As of December 31, 2024, we had $156.1 million remaining available under our "at the market" sales program. We have no obligation to sell additional shares under the Sales Agreement, but we may do so from time to time. Under the agreement, we will pay JonesTrading up to a 2% sales commission on all sales. For the year ended December 31, 2024, we sold 7,002,375 shares of our common stock pursuant to the Sales Agreement and have recognized $43.0 million in proceeds, net of $879,000 of offering costs, including commissions paid to JonesTrading.

Future liquidity commitments

In October 2024, we entered into a strategic business relationship with Kirkland's Stores, Inc. in which we provided $17.0 million in debt financing, including an $8.5 million convertible promissory note and an $8.5 million non-convertible promissory note. On February 5, 2025, Kirkland's stockholders approved and we funded our additional commitment of $8.0 million in exchange for Kirkland's common stock.

In January 2025, we entered into an asset purchase agreement with BBBY Acquisition Co. LLC to acquire the rights of the Buy Buy Baby brand, as well as assets, information and content related to the associated Buy Buy Baby website for a total purchase price of $5.0 million payable at the closing of the transaction following a due diligence period. We funded the transaction in February 2025.

Operating activities

Cash received from customers generally corresponds to our net revenue as our customers primarily use credit cards to buy from us, causing our receivables from these sales transactions to settle quickly. Our payment terms with our partners generally extend beyond the amount of time necessary to collect proceeds from our customers.

The $174.3 million of net cash used by operating activities during the year ended December 31, 2024 was primarily due to loss from operating activities, adjusted for non-cash items of $143.5 million and cash used by changes in operating assets and liabilities of $30.8 million.

The $18.6 million of net cash used by operating activities during the year ended December 31, 2023 was primarily due to loss from operating activities, adjusted for non-cash items, of $60.1 million, offset by cash provided by changes in operating assets and liabilities of $41.5 million.

Investing activities

The $24.9 million of net cash provided by investing activities during the year ended December 31, 2024 was primarily due to proceeds from the sale of our corporate headquarters of $51.4 million and proceeds received from the sale of the Wamsutta trademark of $10.3 million, offset by disbursement for Kirkland's notes receivable of $17.0 million, expenditures for property and equipment of $14.3 million, and purchases of intangible assets of $6.0 million.

The $44.6 million of net cash used in investing activities during the year ended December 31, 2023 was primarily due to purchases of intangible assets of $25.8 million related to Bed Bath & Beyond and expenditures for property and equipment of $19.2 million.

Financing activities

The $32.7 million of net cash provided by financing activities during the year ended December 31, 2024 was primarily due to net proceeds from the sales of our common stock pursuant to our "at the market" public offering, net of offering costs of $43.0 million and proceeds from our revolving line of credit of $25.0 million, offset by payments on our long-term debt in conjunction with the sale of our corporate headquarters of $34.8 million and payment of taxes withheld upon vesting of employee stock awards of $3.3 million.

The $5.5 million of net cash used in financing activities during the year ended December 31, 2023 was primarily due to payments of taxes withheld upon vesting of employee stock awards of $3.8 million and payments on long-term debt of $3.6 million.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2024 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

	Payments due by period				
Contractual Obligations	**Total**	**Less than 1 year**	**1-3 years**	**3-5 years**	**More than 5 years**
Operating leases (1)	$ 9,813	$ 1,749	$ 2,368	$ 2,199	$ 3,497

(1) Represents the future minimum lease payments under non-cancellable operating leases. For information regarding our operating lease obligations, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 13—Leases contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Tax contingencies

We are involved in various tax matters, the outcomes of which are uncertain. As of December 31, 2024, and 2023, tax contingencies were $3.7 million for both periods presented, which are included in our reconciliation of unrecognized tax benefits (see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 23—Income Taxes contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K). Changes in federal, foreign, state, and local tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Borrowings

In March 2020, we entered into two loan agreements. The loan agreements provided for a $34.5 million Senior Note and a $13.0 million Mezzanine Note. In January 2024, we repaid the entire balance under the Mezzanine Note, and in December 2024, in connection with the sale of our corporate headquarters, repaid the remaining $34.5 million balance under the Senior Note. For additional information, please see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 12—Borrowings contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K

In October 2024, we entered into a Loan and Security Agreement (the "Loan Agreement") with BMO Bank N.A. (in such capacity, "BMO"), pursuant to which BMO agreed to lend us up to $25.0 million on a one-year revolving line of credit to aid us in securing strategic ventures. In connection with the Loan Agreement, BMO issued a revolving line of credit promissory note (the "Revolving Note") and granted a lien on the cash collateral account specified in the Loan Agreement (the "Cash Collateral Account"). The revolving line of credit bears interest on the unpaid principal balance at an annual rate equal to the Secured Overnight Financing Rate, or SOFR rate, for a one-month interest period plus 1.00%, established by the Federal Reserve Bank of New York. We are obligated to pay certain commitment fees on undrawn amounts under the Loan Agreement in amounts specified in the Loan Agreement. The Loan Agreement and Revolving Note will terminate on October 18, 2025 and loans thereunder may be borrowed, repaid, and reborrowed up to such date.

Results of Operations

Our Annual Report on Form 10-K for the year ended December 31, 2023, filed on February 23, 2024, includes a discussion and analysis of our year-over-year changes, financial condition, and results of operations for the years ended December 31, 2023 and 2022 in Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Net revenue, costs of goods sold, gross profit and gross margin

The following table summarizes our net revenue, costs of goods sold, gross profit and gross margin for the years ended December 31, 2024 and 2023 (in thousands):

	Year ended December 31,	
	2024	2023
Net revenue	$ 1,394,964	$ 1,561,122
Cost of goods sold (1)		
Product costs and other cost of goods sold	1,104,800	1,195,093
Gross profit (1)	$ 290,164	$ 366,029
Year-over-year percentage change		
Net revenue	(10.6)%	
Gross profit (1)	(20.7)%	
Percent of net revenue		
Cost of goods sold (1)		
Product costs and other cost of goods sold	79.2 %	76.6 %
Gross margin (1)	20.8 %	23.4 %

(1) In the first quarter of fiscal 2024, we changed our presentation for merchant fees associated with customer payments made by credit cards and other payment methods and customer service costs. Under the new presentation, we include such expenses in a separate line in operating expenses, labeled, "Customer service and merchant fees," whereas previously, these expenses were included in "Merchant fees, customer service, and other" as a component of Cost of goods sold. All periods presented have been adjusted to reflect this change in presentation. See Note 2—Accounting Policies and Supplemental Disclosures in the "Notes to Consolidated Financial Statements" included in Item 8 of Part II, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

The 11% decrease in net revenue for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to an 8% decrease in orders delivered and a 3% decrease in average order value. The decrease in orders delivered was driven by a decline in website visits and conversion influenced in part by a shift in consumer spending preferences and macroeconomic factors impacting consumer sentiment. The decrease in average order value was largely driven by orders mixing into categories with lower average unit retail price.

Estimate of unearned product revenue on undelivered product

Our revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates, which can be further impacted by uncertainty, volatility, and any disruption to our carriers caused by certain macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, climate and weather events, or geopolitical events.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before taxes (in thousands):

	Year Ended December 31, 2024	
Change in the Estimate of Average Transit Times (Days)	**Increase (Decrease) Revenue**	**Increase (Decrease) Income Before Income Taxes**
2	$ (4,486)	$ (613)
1	$ (2,387)	$ (326)
As reported	As reported	As reported
(1)	$ 3,653	$ 499
(2)	$ 8,032	$ 1,098

Gross profit and gross margin

Our overall gross margins fluctuate based on factors such as competitive pricing; discounting; product mix of sales; advertising revenue and our marketing allowance program; and operational and fulfillment costs which include costs incurred to operate and staff our warehouses, including rent and depreciation expense associated with these facilities, costs to receive, inspect, pick, and prepare customer order for delivery, and direct and indirect labor costs including payroll, payroll-related benefits, and stock-based compensation, all of which we include as costs in calculating gross margin.

In the first quarter of fiscal 2024, we changed our presentation for merchant fees associated with customer payments made by credit cards and other payment methods and customer service costs. Under the new presentation, we include such expenses in a separate line in operating expenses, labeled, "Customer service and merchant fees," whereas previously, these expenses were included in "Merchant fees, customer service, and other" as a component of Cost of goods sold. All periods presented have been adjusted to reflect this change in presentation. See Note 2—Accounting Policies and Supplemental Disclosures in the "Notes to Consolidated Financial Statements" included in Item 8 of Part II, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Gross margins for the past eight quarterly periods and years ending December 31, 2024 and 2023 were:

	Q1	Q2	Q3	Q4	FY
2024	19.5 %	20.1 %	21.2 %	23.0 %	20.8 %
2023	26.7 %	25.5 %	22.2 %	19.2 %	23.4 %

Gross profit for the year ended December 31, 2024 decreased 21% compared to the same period in 2023, primarily due to a decrease in gross margin. Gross margin decreased to 20.8% for the year ended December 31, 2024, compared to 23.4% for the same period in 2023, primarily due to increased promotional discounting, increased carrier costs, and decreased marketing allowance.

Operating expenses

Sales and marketing expenses

We use a variety of online advertising channels to attract new and repeat customers, including search engine marketing, personalized emails, mobile app, loyalty program, affiliate marketing, display banners, and social media. We also build our brand awareness through linear and streaming TV advertising.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in sales and marketing expense. Rather, they are accounted for as a reduction in revenue as they reduce the amount of consideration we expect to receive in exchange for goods or services and therefore affect net revenues and gross margin. We consider these promotions to be an effective marketing tool.

The following table summarizes our sales and marketing expenses for the years ended December 31, 2024 and 2023 (in thousands):

	Year ended December 31,	
	2024	2023
Sales and marketing expenses	$ 238,564	$ 224,547
Advertising expense included in sales and marketing expenses	228,083	214,907
Year-over-year percentage change		
Sales and marketing expenses	6.2 %	
Advertising expense included in sales and marketing expenses	6.1 %	
Percentage of net revenue		
Sales and marketing expenses	17.1 %	14.4 %
Advertising expense included in sales and marketing expenses	16.4 %	13.8 %

The 270 basis point increase in sales and marketing expenses as a percent of net revenues for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to increased performance marketing expense and brand advertising.

Technology expenses

We seek to deploy our capital resources efficiently in technology to support operations including private and public cloud, web services, customer support solutions, and product search, and in technology to enhance the customer experience, including machine learning algorithms, improving our process efficiency, modernizing and expanding our systems, and supporting and expanding our logistics infrastructure. We expect to continue to incur technology expenses to support these efforts and these expenditures may continue to be material.

The frequency and variety of cyberattacks on our Website, enterprise systems, services, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks, have not been material to date. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table summarizes our technology expenses for the years ended December 31, 2024 and 2023 (in thousands):

	Year ended December 31,	
	2024	2023
Technology expenses	$ 114,584	$ 117,154
Year-over-year percentage change		
Technology expenses	(2.2)%	
Technology expenses as a percent of net revenue	8.2 %	7.5 %

The $2.6 million decrease in technology expenses for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to a reduction in staff-related expenses, partially offset by one-time restructuring costs.

General and administrative expenses

The following table summarizes our general and administrative expenses for the years ended December 31, 2024 and 2023 (in thousands):

	Year ended December 31,	
	2024	2023
General and administrative expenses	$ 74,399	$ 90,410
Year-over-year percentage change		
General and administrative expenses	(17.7)%	
General and administrative expenses as a percent of net revenue	5.3 %	5.8 %

The $16.0 million decrease in general and administrative expenses for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to a reduction in staff-related and third-party expenses, partially offset by one-time restructuring costs.

Customer service and merchant fees

In the first quarter of fiscal 2024, we changed our presentation for merchant fees associated with customer payments made by credit cards and other payment methods and customer service costs. Under the new presentation, we include such expenses in a separate line in operating expenses, labeled, "Customer service and merchant fees," whereas previously, these expenses were included in "Merchant fees, customer service, and other" as a component of Cost of goods sold. All periods presented have been adjusted to reflect this change in presentation. See Note 2—Accounting Policies and Supplemental Disclosures in the "Notes to Consolidated Financial Statements" included in Item 8 of Part II, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Customer service and merchant fees include customer service costs and merchant processing fees associated with customer payments made by credit cards and other payment methods and other variable fees. Customer service and merchant fees as a percent of revenue may vary due to several factors, such as our ability to effectively manage customer service and merchant fees.

The following table summarizes our customer service and merchant fees for the years ended December 31, 2024 and 2023 (in thousands):

	Year ended December 31,	
	2024	2023
Customer service and merchant fees	$ 53,586	$ 52,023
Year-over-year percentage change		
Customer service and merchant fees	3.0 %	
Customer service and merchant fees as a percent of net revenue	3.8 %	3.3 %

The $1.6 million increase in customer service and merchant fees for the year ended December 31, 2024 as compared to the same period in 2023, was primarily due to normalized service capacity in 2024 after understaffing in the second half of 2023, partially offset by decreased credit card costs driven by a decrease in order volume.

Non-operating income (expense)

Interest income, net

The $5.2 million decrease in interest income, net for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to a decrease in balance in our cash equivalents which resulted in less interest income earned.

Other expense, net

The $86.1 million decrease in other expense, net for the year ended December 31, 2024, as compared to the same period in 2023, was primarily due to a $62.7 million decrease in loss recognized from our equity method securities and a $22.5 million decrease in write-down of assets held for sale.

Income taxes

Our effective tax rate for the years ended December 31, 2024 and 2023 was (0.3)% and (15.7%), respectively. Our effective tax rate is affected by recurring items such as research tax credits and non-recurring items such as changes in valuation allowances. In addition, relative changes in expenses or losses for which tax benefits are limited or not recognized, fluctuations in our stock price, changes in laws, regulations, and administrative practices can impact our rate. Our effective tax rate is also affected to a lesser extent by tax rates in foreign jurisdictions and the relative amount of income we earn in those jurisdictions, which we expect to be fairly consistent in the near term. Our effective tax rate differs from the statutory federal income tax rate of 21% primarily due to the impacts of the valuation allowance against our deferred tax assets, net of deferred tax liabilities.

The OECD has issued Pillar Two model rules introducing a new global minimum tax of 15% intended to be effective on January 1, 2024. While the U.S. has not yet adopted the Pillar Two rules, various other governments around the world are enacting such legislation. As currently designed, we expect Pillar Two will ultimately apply to us. Considering we do not currently have material operations in jurisdictions with tax rates lower than the Pillar Two minimum, these rules are not expected to materially increase our global tax costs based on how we currently do business. There remains uncertainty as to the final Pillar Two model rules. We will continue to monitor U.S. and global legislative action related to Pillar Two for potential impacts.

As we repatriate foreign earnings for use in the United States, the distributions will generally be exempt from federal and foreign income taxes but may be subject to certain state taxes. As of December 31, 2024, the cumulative amount of foreign earnings considered permanently reinvested upon which taxes have not been provided, and the corresponding unrecognized deferred tax liability, was not material.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the consolidated financial statements and accompanying notes. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the critical accounting policies, estimates and judgments addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. For additional information, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 2—Accounting Policies and Supplemental Disclosures. We believe that our estimates, assumptions, and judgments are reasonable. We evaluate our estimates and assumptions on an ongoing basis. Actual results may differ significantly from these estimates. Our critical accounting policies are as follows:

- valuation of certain equity method securities carried at fair value.

Valuation of certain equity method securities carried at fair value

We measured certain equity method securities at fair value at the reporting date. In the absence of quoted market prices (e.g., a privately held entity), the fair value was determined in good faith under our valuation policy and process using generally accepted valuation approaches. We utilized an independent third party valuation firm to assist us in determining the fair value of our direct minority interest in tZERO using a market approach. The market approach relied upon market transaction valuations of the subject company, adjusted for changes in enterprise value for guideline public companies. The fair value determination of our direct minority interest in tZERO required the use of significant unobservable inputs (Level 3 inputs) as shown in the table within Note 2—Accounting Policies and Supplemental Disclosures, *Equity securities accounted for under the equity method under ASC 323*. Due to the inherent uncertainty of determining the fair value of Level 3 securities that do not have a readily available market value, the determination of fair value required significant judgment or estimation and changes in the estimates and assumptions used in the valuation models could materially affect the determination of fair value for these assets.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk for the effect of interest rate changes, foreign currency fluctuations, and changes in the market values of our investments. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

Interest Rate Sensitivity

The fair value of our cash and cash equivalents (highly-liquid instruments with an original maturity of 90 days or less at the date of purchase) would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments.

Interest on the revolving line of credit incurred pursuant to the Credit Agreement described herein would accrue based on market rates plus 1.00%, for a one-month interest period; however, we do not expect that any changes in prevailing interest rates will have a material impact on our results of operations.

Foreign Currency Risk

Most of our sales and operating expenses are denominated in U.S. dollars, and therefore, our total revenue and operating expenses are not currently subject to significant foreign currency risk.

Inflation

Increases in commodity and shipping prices and energy and labor costs have resulted in inflationary pressures across various parts of our business and operations, including our partners and supply chain. We continue to monitor the impact of inflation in order to minimize its effects on our customers. We work with our partners to limit the amount of cost increases that are passed on through higher pricing. If costs borne by ourselves or our partners were to be subject to incremental inflationary pressures, we may not be able to fully offset such higher costs through pricing actions or other cost efficiency measures. Our inability or failure to do so could harm our business, financial condition and results of operations.

Investment Risk

The fair values of our equity and debt securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions. At December 31, 2024, our recorded value in equity securities of private companies was $78.2 million, compared to $155.9 million at December 31, 2023. At December 31, 2024, $21.6 million of our equity securities and $25.8 million of our debt securities are of private companies, recorded at fair value using Level 3 inputs. Our fair value assessment of private companies includes a review of recent operating results and trends, recent sales/acquisitions of the equity securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable. For our equity interest in Medici Ventures, L.P., we record our proportionate share of the entity's reported net income or loss, which reflects the fair value changes of the underlying investments of the entity and any other income or losses of the entity.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm	45
Consolidated Balance Sheets	47
Consolidated Statements of Operations	48
Consolidated Statements of Comprehensive Loss	49
Consolidated Statements of Changes in Stockholders' Equity	50
Consolidated Statements of Cash Flows	52
Notes to Consolidated Financial Statements	54
Schedule II Valuation and Qualifying Accounts	82

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Beyond, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Beyond, Inc. and subsidiaries (the Company) as of December 31, 2024 and 2023, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2024, and the related notes and financial statement schedule II (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2024 and 2023, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2024, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2024, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 25, 2025 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

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

Valuation of certain equity method securities

As discussed in Notes 2 and 9 to the consolidated financial statements, the Company values certain equity method securities using a market transaction backsolve approach adjusted for enterprise value changes in guideline public companies. As of December 31, 2024, the Company reported the carrying amount of its equity method securities was $78.2 million, a portion of which related to certain equity method securities valued using this approach.

We identified the valuation of certain equity method securities using a market transaction backsolve approach adjusted for enterprise value changes in guideline public companies as a critical audit matter. A high degree of subjective auditor judgment was required in evaluating the selection of the percentage change in enterprise value for guideline public companies. The valuation was sensitive to reasonably possible changes to this assumption.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's fair value determination process for equity method securities carried at fair value, including a control related to the development of the percentage change in

enterprise value for guideline public companies. We involved valuation professionals with specialized skills and knowledge, who assisted in evaluating the selected percentage change in enterprise value for guideline public companies by comparing the selected percentage change to a range of percentages independently developed using publicly available data for comparable entities.

/s/ KPMG LLP

We have served as the Company's auditor since 2009.

Salt Lake City, Utah
February 25, 2025

Beyond, Inc.
Consolidated Balance Sheets
(in thousands, except per share data)

	December 31, 2024	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	$ 159,169	$ 302,605
Restricted cash	26,924	144
Accounts receivable, net of allowance for credit losses of $2,236 and $1,298	15,847	19,420
Inventories	11,546	13,040
Prepaids and other current assets	14,021	14,864
Total current assets	227,507	350,073
Property and equipment, net	23,544	27,577
Intangible assets, net	30,246	25,254
Goodwill	6,160	6,160
Equity securities, including securities measured at fair value of $21,640 and $41,046	78,186	155,873
Operating lease right-of-use assets	6,858	3,468
Other long-term assets, net	29,453	12,951
Property and equipment, net held for sale	—	54,462
Total assets	$ 401,954	$ 635,818
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 81,939	$ 106,070
Accrued liabilities	73,614	73,682
Unearned revenue	43,095	49,597
Operating lease liabilities, current	1,342	2,814
Short-term debt, net	24,871	—
Current debt, net held for sale	—	232
Total current liabilities	224,861	232,395
Operating lease liabilities, non-current	6,452	940
Other long-term liabilities	7,909	9,107
Long-term debt, net held for sale	—	34,244
Total liabilities	239,222	276,686
Commitments and Contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, $0.0001 par value, authorized shares - 5,000, issued and outstanding - none	—	—
Common stock, $0.0001 par value, authorized shares - 100,000		
Issued shares - 59,560 and 51,770		
Outstanding shares - 53,069 and 45,414	5	5
Additional paid-in capital	1,072,869	1,007,649
Accumulated deficit	(740,466)	(481,671)
Accumulated other comprehensive loss	—	(506)
Treasury stock at cost - 6,491 and 6,356	(169,676)	(166,345)
Total stockholders' equity	162,732	359,132
Total liabilities and stockholders' equity	$ 401,954	$ 635,818

See accompanying notes to consolidated financial statements.

Beyond, Inc.
Consolidated Statements of Operations
(in thousands, except per share data)

	Year Ended December 31,		
	2024	**2023**	**2022**
Net revenue	$ 1,394,964	$ 1,561,122	$ 1,929,334
Cost of goods sold	1,104,800	1,195,093	1,421,721
Gross profit	290,164	366,029	507,613
Operating expenses:			
Sales and marketing	238,564	224,547	215,477
Technology	114,584	117,154	121,158
General and administrative	74,399	90,410	79,701
Customer service and merchant fees	53,586	52,023	64,269
Total operating expenses	481,133	484,134	480,605
Operating income (loss)	(190,969)	(118,105)	27,008
Interest income, net	6,765	12,007	2,965
Other expense, net	(73,907)	(160,024)	(63,825)
Loss before income taxes	(258,111)	(266,122)	(33,852)
Provision for income taxes	684	41,720	1,384
Net loss	$ (258,795)	$ (307,842)	$ (35,236)
Net loss per share of common stock:			
Basic	$ (5.56)	$ (6.81)	$ (0.83)
Diluted	$ (5.56)	$ (6.81)	$ (0.83)
Weighted average shares of common stock outstanding:			
Basic	46,542	45,214	44,323
Diluted	46,542	45,214	44,323

See accompanying notes to consolidated financial statements.

Beyond, Inc.
Consolidated Statements of Comprehensive Loss
(in thousands)

	Year Ended December 31,		
	2024	**2023**	**2022**
Net loss	$ (258,795)	$ (307,842)	$ (35,236)
Other comprehensive income:			
Unrealized gain on cash flow hedges, net of tax of $0, $0 and $0	506	16	15
Other comprehensive income	506	16	15
Comprehensive loss	$ (258,289)	$ (307,826)	$ (35,221)

See accompanying notes to consolidated financial statements.

Beyond, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands)

	Year Ended December 31,		
	2024	**2023**	**2022**
Equity attributable to stockholders of Beyond, Inc.			
Shares of common stock issued			
Balance at beginning of year	51,770	51,102	46,625
Common stock issued upon vesting of restricted stock	441	550	295
Common stock issued for ESPP purchases	119	118	84
Conversion of preferred stock	—	—	4,098
Common stock sold through offerings	7,002	—	—
Other	228	—	—
Balance at end of year	59,560	51,770	51,102
Shares of treasury stock			
Balance at beginning of year	6,356	6,151	3,602
Repurchases of common stock	—	—	2,461
Tax withholding upon vesting of employee stock awards	135	205	88
Balance at end of year	6,491	6,356	6,151
Total shares of common stock outstanding	53,069	45,414	44,951
Common stock			
Balance at beginning of year	$ 5	$ 5	$ 4
Conversion and elimination of preferred stock	—	—	1
Balance at end of year	$ 5	$ 5	$ 5
Shares of Series A-1 preferred stock issued			
Balance at beginning of year	—	—	4,204
Conversion and elimination of preferred stock	—	—	(4,204)
Balance at end of year	—	—	—
Shares of treasury stock			
Balance at beginning of year	—	—	—
Repurchases of shares	—	—	7
Conversion and elimination of preferred stock	—	—	(7)
Balance at end of year	—	—	—
Total shares of Series A-1 preferred stock outstanding	—	—	—
Shares of Series B Preferred stock issued and outstanding			
Balance at beginning of year	—	—	357
Conversion and elimination of preferred stock	—	—	(357)
Balance at end of year	—	—	—
Preferred stock	$ —	$ —	$ —

Continued on the following page

Beyond, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands)

	Year Ended December 31,		
	2024	**2023**	**2022**
Additional paid-in capital			
Balance at beginning of year	$ 1,007,649	$ 982,718	$ 960,544
Stock-based compensation to employees and directors	19,255	23,018	18,318
Common stock issued for ESPP purchases	1,472	1,913	2,779
Conversion and elimination of preferred stock	—	—	1,043
Common stock sold through offerings, net	42,993	—	—
Other	1,500	—	34
Balance at end of year	$ 1,072,869	$ 1,007,649	$ 982,718
Accumulated deficit			
Balance at beginning of year	$ (481,671)	$ (173,829)	$ (136,590)
Net loss	(258,795)	(307,842)	(35,236)
Dividend issued upon conversion and elimination of preferred stock	—	—	(1,697)
Conversion and elimination of preferred stock	—	—	(306)
Balance at end of year	$ (740,466)	$ (481,671)	$ (173,829)
Accumulated other comprehensive loss			
Balance at beginning of year	$ (506)	$ (522)	$ (537)
Net other comprehensive income	506	16	15
Balance at end of year	$ —	$ (506)	$ (522)
Treasury stock			
Balance at beginning of year	$ (166,345)	$ (162,546)	$ (79,035)
Repurchases of common stock and Series A-1 preferred stock	—	—	(80,117)
Tax withholding upon vesting of employee stock awards	(3,331)	(3,799)	(3,700)
Conversion and elimination of preferred stock	—	—	306
Balance at end of year	$ (169,676)	$ (166,345)	$ (162,546)
Total stockholders' equity	$ 162,732	$ 359,132	$ 645,826

See accompanying notes to consolidated financial statements.

Beyond, Inc.
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2024	**2023**	**2022**
Cash flows from operating activities:			
Net loss	$ (258,795)	$ (307,842)	$ (35,236)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	19,062	19,447	16,706
Non-cash operating lease cost	3,451	4,737	5,304
Stock-based compensation to employees and directors	19,255	23,018	18,318
(Increase) decrease in deferred income taxes, net	283	41,349	(1,404)
Gain on sale of intangible assets	(10,275)	—	—
Gain on disposal of cryptocurrencies	—	(6,361)	—
Write-down of assets held for sale	3,385	25,875	—
Loss from equity method securities	77,687	140,404	63,923
Loss on debt securities carried at fair value	2,430	—	—
Other non-cash adjustments	(14)	(693)	185
Changes in operating assets and liabilities:			
Accounts receivable, net	3,573	(1,727)	3,805
Inventories	1,494	(6,514)	(1,389)
Prepaids and other current assets	1,293	1,889	4,076
Other long-term assets, net	(2,175)	(757)	(1,116)
Accounts payable	(24,172)	32,555	(28,821)
Accrued liabilities	(31)	10,442	(36,625)
Unearned revenue	(6,502)	5,117	(14,907)
Operating lease liabilities	(2,819)	(5,094)	(5,527)
Other long-term liabilities	(1,434)	5,569	173
Net cash used in operating activities	(174,304)	(18,586)	(12,535)
Cash flows from investing activities:			
Proceeds from the sale of assets held for sale	51,441	—	—
Proceeds from the sale of intangible assets	10,275	—	—
Disbursement for notes receivable	(17,000)	(10,000)	—
Expenditures for property and equipment	(14,315)	(19,181)	(14,899)
Purchase of intangible assets	(6,044)	(25,816)	—
Purchase of equity securities	—	—	(18,920)
Proceeds from the disposal of cryptocurrencies	—	9,804	—
Capital distribution from investment	—	4	1,224
Other investing activities, net	569	559	(439)
Net cash provided by (used in) investing activities	24,926	(44,630)	(33,034)

Continued on the following page

Beyond, Inc.
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2024	**2023**	**2022**
Cash flows from financing activities:			
Proceeds from sale of common stock, net of offering costs	42,993	—	—
Proceeds from short-term debt	25,000	—	—
Proceeds from employee stock purchase plan	1,472	1,913	924
Payments on long-term debt	(34,782)	(3,606)	(3,447)
Payments of taxes withheld upon vesting of employee stock awards	(3,331)	(3,799)	(3,700)
Repurchase of shares	—	—	(80,117)
Other financing activities, net	1,370	—	—
Net cash provided by (used in) financing activities	32,722	(5,492)	(86,340)
Net decrease in cash, cash equivalents, and restricted cash	(116,656)	(68,708)	(131,909)
Cash, cash equivalents, and restricted cash, beginning of year	302,749	371,457	503,366
Cash, cash equivalents, and restricted cash, end of year	$ 186,093	$ 302,749	$ 371,457

See accompanying notes to consolidated financial statements.

1. BASIS OF PRESENTATION

Business and organization

As used herein, "Beyond," "the Company," "we," "our" and similar terms include Beyond, Inc. and its controlled subsidiaries, unless the context indicates otherwise. We were formed on May 5, 1997 as D2-Discounts Direct, a limited liability company ("LLC"). On December 30, 1998, we were reorganized as a C Corporation in the State of Utah and reincorporated in Delaware in May 2002. On October 25, 1999, we changed our name to Overstock.com, Inc. and on November 6, 2023, we changed our name to Beyond, Inc.

Beyond, Inc. is an e-commerce affinity marketing company with a singular focus: connecting consumers with products and services they love. As the owner of the iconic Bed Bath & Beyond, Overstock and Zulily brands, as well as several other brands, we strive to curate an exceptional online shopping experience. Our suite of premier online retail brands allow us to offer a comprehensive array of products and add-on services, catering to customers in the United States and Canada along with customers in Mexico through trademark licensing. Our e-commerce platform, which is also accessible through our mobile app, includes www.bedbathandbeyond.com, www.bedbathandbeyond.ca, www.overstock.com, and www.zulily.com, and is collectively referred to as the "Website." From furniture, bedding, and bath essentials to patio and outdoor furniture, area rugs, tabletop and cookware, décor, storage, jewelry, watches, and fashion – we offer an extensive range of products at a smart value. In addition to products, we also offer an increasing number of add-on services across our platforms, including warranties, shipping insurance, installation services, and access to home loans.

Basis of presentation

We have prepared the accompanying consolidated financial statements pursuant to generally accepted accounting principles in the United States ("GAAP"). Preparing financial statements requires us to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, our actual results may be different from our estimates. The results of operations presented herein are not necessarily indicative of our results for any future period.

2. ACCOUNTING POLICIES AND SUPPLEMENTAL DISCLOSURES

Principles of consolidation

The accompanying consolidated financial statements include our accounts and the accounts of our wholly-owned subsidiaries. All intercompany account balances and transactions have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in our consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, loyalty program reward point and gift card breakage, sales returns, inventory valuation, asset useful lives, equity and debt securities valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, our accounting of these estimates may change from period to period. To the extent there are differences between these estimates and actual results, our consolidated financial statements may be materially affected.

Change in presentation in the income statement

In the first quarter of fiscal 2024, the Company changed the presentation for merchant fees associated with customer payments made by credit cards and other payment methods and customer service costs. Under the new presentation, the Company includes such expenses in a separate line in operating expenses labeled, "Customer service and merchant fees", whereas previously, these expenses were included in Cost of goods sold.

The Company concluded that such a change in presentation is preferable in the circumstances because the treatment of these costs as operating expenses is aligned with the changes in business and strategy. The change will also provide greater transparency in the Company's external disclosures and related communications with the market.

This change in accounting policy has been applied retrospectively, and the consolidated statements of operations reflect the effect of this accounting principle change for all periods presented. This change in presentation had no impact on Loss before income taxes, Net loss, or Net loss per share of common stock basic or diluted. The consolidated balance sheets, consolidated statements of comprehensive loss, consolidated statements of changes in stockholders' equity, and consolidated statements of cash flows were not impacted by this accounting policy change.

The change in presentation to the Company's consolidated statements of operations were as follows (in thousands):

	Year ended December 31, 2023			Year ended December 31, 2022		
	Previously reported	Effect of change	As adjusted	Previously reported	Effect of change	As adjusted
Cost of goods sold	$ 1,247,116	$ (52,023)	$ 1,195,093	$ 1,485,990	$ (64,269)	$ 1,421,721
Gross profit	314,006	52,023	366,029	443,344	64,269	507,613
Customer service and merchant fees	—	52,023	52,023	—	64,269	64,269

Supplemental cash flow information

The following table shows supplemental cash flow information (in thousands):

	Year Ended December 31,		
	2024	2023	2022
Supplemental disclosures of cash flow information:			
Cash paid during the period:			
Interest paid, net of amounts capitalized	$ 1,489	$ 1,598	$ 1,777
Income taxes (refunded) paid, net	(132)	556	2,562
Non-cash investing and financing activities:			
Purchases of property and equipment included in accounts payable and accrued liabilities	$ 4	$ 211	$ 2,527

See also Note 13—Leases for additional supplemental disclosures of cash flow information related to our leases.

Cash equivalents

We classify all highly liquid instruments, including instruments with an original maturity of three months or less at the time of purchase, as cash equivalents.

Restricted cash

We consider cash that is legally restricted and cash that is held as compensating balances for credit arrangements as restricted cash.

Fair value of financial instruments

We account for our assets and liabilities using a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs have created the fair-value hierarchy below. This hierarchy requires us to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

- Level 1—Quoted prices for identical instruments in active markets;
- Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and
- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Our assets that are adjusted to fair value on a recurring basis are cash equivalents, which fair values are determined using quoted market prices from daily exchange traded markets on the closing price as of the balance sheet date and are classified as Level 1. Our recurring fair value measurements using unobservable inputs (Level 3) include our equity securities under ASC 323 accounted for under the fair value option, available-for-sale debt securities, and our debt securities carried at fair value. Our other financial instruments, including cash, restricted cash, accounts receivable, accounts payable, accrued liabilities, and debt are carried at cost, which approximates their fair value. Certain assets, including long-lived assets, certain equity securities under ASC 323, goodwill, and other intangible assets, are measured at fair value on a nonrecurring basis; that is, the assets are not measured at fair value on an ongoing basis, but are subject to fair value adjustments using fair value measurements with unobservable inputs (Level 3).

Accounts receivable, net

Accounts receivable consist primarily of trade amounts due from customers in the United States and uncleared credit card transactions at period end. Accounts receivables are recorded at invoiced amounts and do not bear interest. We maintain an allowance for expected credit losses based upon our business customers' financial condition and payment history, our historical collection experience, and any future expected economic conditions.

Inventories

Inventories include merchandise acquired for resale and processed returns which are accounted for using a standard costing system which approximates the first-in-first-out ("FIFO") method of accounting and are valued at the lower of cost and net realizable value. Inventory valuation requires us to make judgments, based on currently available information, about the likely method of disposition, such as through sales to individual customers, returns to product vendors, liquidations, and expected recoverable values of each disposition category.

Prepaids and other current assets

Prepaids and other current assets represent expenses paid prior to receipt of the related goods or services, including advertising, license fees, maintenance, packaging, insurance, prepaid inventories, other miscellaneous costs, and cryptocurrencies.

Property and equipment, net

Property and equipment are recorded at cost and stated net of depreciation and amortization. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the related assets as follows:

	Life (years)
Building	40
Land improvements	20
Building machinery and equipment	15-20
Furniture and equipment	5-7
Computer hardware	3-4
Computer software, including internal-use software and website development	2-4

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated useful lives.

Included in property and equipment is the capitalized cost of internal-use software and website development, including software used to upgrade and enhance our Website and processes supporting our business. We capitalize costs incurred during the application development stage of internal-use software and amortize these costs over the estimated useful life. Costs incurred related to design or maintenance of internal-use software are expensed as incurred.

Upon sale or retirement of assets, cost and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in our consolidated statements of operations.

Valuation of assets held for sale

We classify assets and liabilities to be sold (disposal group) as held for sale in the period when all of the applicable criteria are met, including: (i) management commits to a plan to sell, (ii) the disposal group is available to sell in its present condition, (iii) there is an active program to locate a buyer, (iv) the disposal group is being actively marketed at a reasonable price in relation to its fair value, (v) significant changes to the plan to sell are unlikely, and (vi) the sale of the disposal group is generally probable of being completed within one year. Assets and liabilities held for sale are presented separately within the Consolidated balance sheets with any adjustments necessary to measure the disposal group at the lower of its carrying value or fair value less costs to sell. Depreciation of property and equipment is not recorded while these assets are classified as held for sale. The fair value of a disposal group, less any costs to sell, is assessed each reporting period it remains classified as held for sale and any remeasurement to the lower of carrying value or fair value less costs to sell is reported as an adjustment to the carrying value of the disposal group recorded in Other expense, net in our consolidated statements of operations. We measured our assets held for sale at fair value based on Level 1 inputs. See Note 4—Assets Held for Sale for further information.

Equity securities accounted for under the equity method under ASC 323

At December 31, 2024, we held minority interests in privately held entities, Medici Ventures, L.P., tZERO, and SpeedRoute, LLC ("SpeedRoute"), accounted for under the equity method under ASC Topic 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"), which are included in Equity securities in our consolidated balance sheets. We can exercise significant influence, but not control, over these entities through holding more than a 20% voting interest.

Based on the nature of our ownership interests and the extent of our contributed capital, we held a variable interest in Medici Ventures, L.P. and SpeedRoute, both of which meet the definition of variable interest entities; however, we are not the primary beneficiary of these entities for purposes of consolidation as we do not have the power (either explicit or implicit), through voting rights or otherwise, to direct the activities of Medici Ventures, L.P. or SpeedRoute that most significantly impact their economic performance. Our investments in these variable interest entities totaled $60.5 million as of December 31, 2024, representing our maximum exposures to loss.

We record our proportionate share of Medici Ventures, L.P.'s net assets assuming the entity (i) liquidated its net assets at their book values and (ii) distributed the proceeds to the investors based on the distribution waterfall in the investment agreement, which reflects the fair value changes of the underlying investments of the entity, any investor-level adjustments, and any other operating income or losses of the entity, in Other expense, net in our consolidated statements of operations with corresponding adjustments to the carrying value of the asset. If such events or circumstances have occurred that may indicate the fair value of our equity interest is less than its carrying value, we estimate the fair value of our equity interest and recognize an impairment loss equal to the difference between the fair value of the security and its carrying value which is recorded in Other expense, net in our consolidated statements of operations. There is no difference between the carrying amount of our investment in the entity and the amount of underlying equity we have in the entity's net assets.

We have elected to apply the fair value option for valuing our direct minority interests in tZERO and SpeedRoute as we determined that accounting for our direct minority interests in tZERO and SpeedRoute under the fair value option would approximate the same valuation approach used by Medici Ventures, L.P. for valuing our indirect interest in tZERO and SpeedRoute and would be the most meaningful and transparent option for evaluating our continued exposure to the economics of tZERO and SpeedRoute. The fair value was determined in good faith under our valuation policy and process using generally accepted valuation approaches through the use of a third-party valuation firm. Our assessment includes a review of recent operating results and trends, recent sales/acquisitions of the equity securities, and other publicly available data.

The methods and significant assumptions to estimate the fair value of our direct minority interests in tZERO under the fair value option include using a market approach. The market approach relied upon market transaction valuations of the subject company, adjusted for changes in enterprise value for guideline public companies. Due to the last Series B financing round led by the Intercontinental Exchange, the valuation technique used to value our direct interest in tZERO was a blended market approach using a transaction backsolve adjusted for enterprise value changes in guideline public companies, with an option pricing model and a guideline public company method. The methods and significant assumptions to estimate the fair value of our direct minority interests in SpeedRoute under the fair value option include using a market approach based on latest market transaction valuations.

The following table summarizes the valuation techniques and significant unobservable inputs used in the fair value measurement of our Level 3 equity securities:

Investment	Fair Value	Valuation Technique	Unobservable Inputs	Inputs
tZERO	$ 17,720	Blended market approach - transaction backsolve adjusted for enterprise value changes in guideline public companies, with an option pricing model method and guideline public company method	Term to liquidity	4.0 years
			Volatility	110%
			Percentage change in enterprise value for guideline public companies	(82.4)%
SpeedRoute	3,920	Market approach - latest transactions	N/A	N/A
Total	$ 21,640			

A significant change in the term to liquidity, volatility, or percentage change in enterprise value for guideline public companies inputs could result in a significant change in the fair value measurement.

Leases

We determine if an arrangement is a lease at inception. We account for lease agreements as either operating or finance leases depending on certain defined criteria. Operating leases are recognized in Operating lease right-of-use ("ROU") assets, Operating lease liabilities, current, and Operating lease liabilities, non-current on our consolidated balance sheets. Finance leases are included in Other long-term assets, net, Other current liabilities, and Other long-term liabilities on our consolidated balance sheets. Lease assets and liabilities are recognized based on the present value of the future minimum lease payments over the lease term at the commencement date. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at the commencement date in determining the present value of future payments. In certain of our lease agreements, we receive rent holidays and other incentives. We recognize lease costs on a straight-line basis over the lease term without regard to deferred payment terms, such as rent holidays, that defer the

commencement date of required payments. Our lease terms may include options to extend or terminate the lease, and we adjust our measurement of the lease when it is reasonably certain that we will exercise that option. Lease payments used in measurement of the lease liability typically do not include executory costs, such as taxes, insurance, and maintenance, unless those costs can be reasonably estimated at lease commencement. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the life of the lease, without assuming renewal features, if any, are exercised. We do not separate lease and non-lease components for our leases.

Treasury stock

We account for treasury stock of our common shares under the cost method and include treasury stock as a component of stockholders' equity.

Goodwill

Goodwill represents the excess of the purchase price paid over the fair value of the net assets acquired in business combinations. Goodwill is not amortized but is tested for impairment at least annually or when we deem that a triggering event has occurred. When evaluating whether goodwill is impaired, we make a qualitative assessment to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the qualitative assessment determines that it is more likely than not that its fair value is less than its carrying amount, we compare the fair value of the reporting unit to which the goodwill is assigned to its carrying amount. If the carrying amount exceeds its fair value, an impairment loss is recognized in an amount equal to the excess of the carrying amount over the fair value of the reporting unit, not to exceed the carrying amount of the goodwill. We completed our annual goodwill impairment test as of December 31, 2024 by performing a qualitative assessment and concluded that the estimated fair value of the reporting units exceeded their carrying amount. There were no impairments to goodwill recorded during the years ended December 31, 2024, 2023 and 2022 and no other changes to the carrying amount of goodwill during the years ended December 31, 2024 and 2023. Our goodwill balance was $6.2 million as of December 31, 2024 and 2023.

Intangible assets other than goodwill

We capitalize and amortize intangible assets other than goodwill over their estimated useful lives unless such lives are indefinite. Intangible assets other than goodwill acquired separately from third parties are capitalized at cost, including any related direct acquisition costs, while such assets acquired as part of a business combination are capitalized at their acquisition-date fair value. Indefinite-lived intangible assets are tested for impairment annually or more frequently when events or circumstances indicate that the carrying value more likely than not exceeds its fair value. In addition, we routinely evaluate the remaining useful life of intangible assets not being amortized to determine whether events or circumstances continue to support an indefinite useful life, including any legal, regulatory, contractual, competitive, economic, or other factors that may limit their useful lives. Definite-lived intangible assets are amortized using the straight-line method of amortization over their useful lives, with the exception of certain intangibles (such as acquired customer lists) which are amortized using an accelerated method of amortization based on estimated customer attrition rates. These definite-lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable as described below under *Impairment of long-lived assets*.

Impairment of long-lived assets

We review property and equipment, right-of-use assets, and other long-lived assets, including intangible assets other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by a comparison of the assets' carrying amount to future undiscounted net cash flows the asset group is expected to generate. Cash flow forecasts are based on trends of historical performance and management's estimate of future performance, giving consideration to existing and anticipated competitive and economic conditions. If such asset group is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair values. There were no impairments to long-lived assets recorded during the years ended December 31, 2024, 2023 and 2022.

Available-for-sale debt securities

During the year ended December 31, 2023, we invested $10.0 million in GrainChain, Inc. in the form of a convertible promissory note (the "Note"). The Note bears interest at an annual interest rate of 5% and accrued interest is recorded in Interest income, net in our consolidated statements of operations. The Note has a maturity date of January 3, 2025 at which time the

outstanding principal and any unpaid accrued interest will automatically convert into shares of a newly created series of preferred stock issued by GrainChain, Inc. The Note has not converted as the Company is in active discussions regarding our interests in GrainChain. The fair value of the Note, including accrued interest, was $11.0 million at December 31, 2024, which is included in Other long-term assets, net on our consolidated balance sheets.

Based on the nature of our indirect ownership interests in GrainChain, Inc. through Medici Ventures, L.P. and the extent of our contributed capital, we held a variable interest in GrainChain, Inc., which meets the definition of a variable interest entity; however, we are not the primary beneficiary of this entity for purposes of consolidation as we do not have the power (either explicit or implicit), through voting rights or otherwise, to direct the activities of GrainChain, Inc. that most significantly impact its economic performance. Our maximum exposure to loss in this variable interest entity totaled $30.6 million as of December 31, 2024, representing our direct and indirect interest in GrainChain, Inc.

Debt securities carried at fair value

In October 2024, the Company entered into a strategic business relationship with Kirkland's Stores, Inc. ("Kirkland's") which includes, among other things, entry into a secured Term Loan Credit Agreement ("Credit Agreement"). The Company provided $17.0 million in debt financing to Kirkland's, including an $8.5 million convertible promissory note and an $8.5 million non-convertible promissory note (collectively, the "Notes"). The Credit Agreement bears interest on the unpaid principal balance at an annual rate equal to the Secured Overnight Financing Rate, or SOFR rate, for a one-month, two-month or six-month SOFR period (depending on which option is elected) plus 2.75%, established by the Federal Reserve Bank of New York. The $8.5 million convertible promissory note (plus accrued interest) (the "Conversion Amount") can be converted into Kirkland's common stock at a conversion price of $1.85 per share in an amount not to exceed 19.9% of the outstanding shares at the Company's election. The Company has also committed to invest $8.0 million in Kirkland's common stock pursuant to Subscription Agreement and Investor Rights Agreement (collectively the "Subscription Agreement"), subject to receiving approval of Kirkland's stockholders. Subsequent to year end, stockholders of Kirkland's approved the additional $8.0 million investment in exchange for Kirkland's common stock. See Note 26—Subsequent Events for further information.

We have elected to present the Notes at fair value, which was $14.8 million at December 31, 2024. The balance of the Notes is included in Other long-term assets, net on our consolidated balance sheets.

Other long-term assets, net

Other long-term assets, net consist primarily of long-term prepaid expenses, deposits, available-for-sale debt securities, and debt securities carried at fair value.

Revenue recognition

Revenue is recognized when, or as, control of a promised product or service transfers to a customer, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring those products or services. Revenue excludes taxes that have been assessed by governmental authorities and that are directly imposed on revenue-producing transactions between the Company and its customers, including sales and use taxes. Revenue recognition is evaluated through the following five-step process:

1) identification of the contract with a customer;
2) identification of the performance obligations in the contract;
3) determination of the transaction price;
4) allocation of the transaction price to the performance obligations in the contract; and
5) recognition of revenue when or as a performance obligation is satisfied.

Product Revenue

We derive our revenue primarily through our Website but may also derive revenue from sales of merchandise through other channels. Our revenue is derived primarily from merchandise sold at a point in time and shipped to customers. Merchandise sales are fulfilled with inventory sourced through our partners or from our owned inventory. The vast majority of our sales, however, are fulfilled from inventory sourced through our partners.

Revenue is recognized when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer or the date a service is provided and is recognized in an amount that reflects the expected consideration to be received in exchange for such goods or services. As such, customer orders are recorded as unearned revenue prior to delivery of products or services ordered. As we ship high volumes of packages through multiple carriers, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the type of shipping carrier (as carriers have different in-transit times); (ii) the fulfillment source (either our warehouses, those warehouses we control, or those of our partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to seven business days from the date of shipment. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

Generally, we require authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal, Apple Pay, Klarna), or verification of receipt of payment, before we ship products to consumers or business purchasers. We generally receive payments from our customers before our payments to our suppliers are due. We do not recognize assets associated with costs to obtain or fulfill a contract with a customer.

Shipping and handling is considered a fulfillment activity, as it takes place prior to the customer obtaining control of the merchandise, and fees charged to customers are included in net revenue upon completion of our performance obligation. We present revenue net of sales taxes, discounts, and expected refunds.

Our merchandise sales contracts include terms that could cause variability in the transaction price for items such as discounts, credits, or sales returns. Accordingly, the transaction price for product sales includes estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. At the time of sale, we estimate a sales return liability for the variable consideration based on historical experience, which is recorded within Accrued liabilities in the consolidated balance sheet. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

We evaluate the criteria outlined in ASC 606-10-55, *Principal versus Agent Considerations*, in determining whether it is appropriate to record the gross amount of merchandise sales and related costs or the net amount earned as commissions. When we are the principal in a transaction and control the specific good or service before it is transferred to the customer, revenue is recorded gross; otherwise, revenue is recorded on a net basis. Through contractual terms with our partners, we have the ability to control the promised goods or services and as a result record the majority of our revenue on a gross basis.

Loyalty program

We have a customer membership program called Beyond+ for which we sell annual memberships. For Beyond+ memberships, we record membership fees as unearned revenue and we recognize revenue ratably over the membership period.

Members earn dollars for qualifying purchases made on our Bed Bath & Beyond website. As such, the initial transaction price giving rise to the reward dollar is allocated to each separate performance obligation based upon its relative standalone selling price. In determining the stand-alone selling price, we incorporate assumptions about the redemption rates of loyalty points. We recognize revenue for loyalty program reward dollars when customers redeem such rewards as part of a purchase on our Bed Bath & Beyond website.

We record the standalone value of reward dollars earned in unearned revenue at the time the reward dollars are earned. Loyalty program reward dollars expire 90 days after the customer's membership expires. We recognize estimated reward dollar breakage, to which we expect to be entitled, over the expected redemption period in proportion to actual redemptions by customers.

We also drive customer loyalty and trip frequency through the Welcome Rewards loyalty program, which provides customers with exclusive benefits and offers across the Bed Bath & Beyond website.

Advertising Revenue

Advertising revenues are derived primarily from sponsored links and display advertisements that are placed on our Website, distributed via email, or sent out as direct mailers. Advertising revenue is recognized in revenue when the advertising services are rendered. Advertising revenues were less than 3% of total net revenues for all periods presented.

Unearned Revenue

When the timing of our provision of goods or services is different from the timing of the payments made by our customers, we recognize a contract liability (customer payment precedes performance).

Customer orders are recorded as unearned revenue when payment is received prior to delivery of products or services ordered. We record amounts received for Beyond+ membership fees as unearned revenue and we recognize it ratably over the membership period. We record loyalty program reward dollars earned from purchases as unearned revenue at the time they are earned based upon the relative standalone selling price of the loyalty program reward dollar and we recognize it as revenue in proportion to the estimated pattern of rights exercised by the customer. If reward dollars are not redeemed, we recognize revenue upon expiration. In addition, we sell gift cards and record related unearned revenue at the time of the sale. We sell gift cards without expiration dates and we recognize revenue from a gift card upon redemption of the gift card. The unredeemed portion of our gift cards are recognized in revenue over the expected redemption period based upon the estimated pattern of rights exercised by the customer, if the gift cards are not subject to escheat laws.

Sales returns allowance

Revenue is recorded net of estimated returns. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

Cost of goods sold

Our cost of goods sold includes product costs, warehousing costs, outbound shipping costs, and handling and fulfillment costs, and is recorded in the same period in which related revenues have been recorded.

Advertising expense

We expense the costs of producing advertisements the first time the advertising takes place and expense the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to our Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to our Website generated during a given period. Advertising expense is included in Sales and marketing expenses in our consolidated statements of operations. Prepaid advertising is included in Prepaids and other current assets in our consolidated balance sheets.

Stock-based compensation

We measure compensation expense for our outstanding unvested restricted stock awards at fair value on the date of grant and recognize compensation expense over the service period for awards at the greater of a straight-line basis or on an accelerated schedule when vesting of the share-based awards exceeds a straight-line basis. When an award is forfeited prior to the vesting date, we recognize an adjustment for the previously recognized expense in the period of the forfeiture. See Note 18—Stock-Based Awards.

We use the Black-Scholes option pricing model to determine the fair value of our employee stock purchase plan shares. The determination of the fair value of stock-based payment awards on the date of grant using an option pricing model is affected by our stock price and assumptions regarding a number of complex and subjective variables. These variables include our expected stock price volatility over the expected term of the awards, actual and projected employee stock option exercise behaviors, a risk-free interest rate and any expected dividends.

We use the Monte-Carlo valuation model to determine the fair value of the portion of our performance shares and performance share options with market conditions. The determination of the fair value of stock-based payment awards on the date of grant using the Monte-Carlo valuation model is affected by our stock price and assumptions regarding a number of complex and subjective variables. These variables include our expected stock price volatility, a risk-free interest rate, the probability of reaching the stock price performance targets, and a 20-trading-day average stock price. The portion of our performance shares with performance conditions are measured at fair value on the date of grant and the probability of the awards meeting the performance condition is not included in the grant date fair value, but is assessed quarterly for expense recognition. Compensation expense for these awards are recognized using a graded vesting schedule over the requisite service

period. To the extent that a market-based vesting award is forfeited following completion of the requisite service period, compensation expense for accounting purposes is not reversed.

Loss contingencies

In the normal course of business, we are involved in legal proceedings and other potential loss contingencies. We accrue a liability for such matters when it is probable that a loss has been incurred and the amount, or range of amounts, can be reasonably estimated. When only a range of probable loss can be estimated, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. We expense legal fees as incurred (See Note 15—Commitments and Contingencies).

Income taxes

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statements and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe these assets are more likely than not to be realized. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including projected future taxable income, scheduled reversals of our deferred tax liabilities, tax planning strategies, and results of recent operations. Our projections of future taxable income are subject to changes in how we do business, economic outlook, political climate, and other conditions such as supply chain challenges, inflation, rising interest rates, geopolitical events, and other macroeconomic conditions, and judgment is required in determining our ability to use our deferred tax assets.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority. We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated income statements. Accrued interest and penalties are included within the related tax liability line in our consolidated balance sheets.

Net loss per share

Basic net loss per common share is computed by dividing net loss attributable to common shares by the weighted average number of common shares outstanding during the period.

Diluted net loss per share is computed by dividing net loss attributable to common shares by the weighted average number of common and potential common shares outstanding during the period. Potential common shares, comprising incremental common shares issuable from the employee stock purchase plan and restricted stock awards are included in the calculation of diluted net loss per common share to the extent such shares are dilutive.

Recently adopted accounting standards

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires public entities to disclose information about their reportable segments' significant expenses and other segment items on an interim and annual basis. For public entities, ASU 2023-07 is required to be adopted for annual periods beginning after December 15, 2023 and for interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. The Company adopted the provisions of this ASU as of January 1, 2024, with respect to the annual disclosures beginning with the year ended December 31, 2024 and interim disclosures beginning with the three months ended March 31, 2025, including the presentation of the comparable prior periods. The adoption of this ASU resulted in additional segment reporting disclosures in the Company's consolidated financial statements.

Recently issued accounting standards

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures,* which requires public entities to disclose disaggregated information about a reporting entity's effective tax rate reconciliation as well as additional information on income taxes paid. For public entities, ASU 2023-09 is required to be adopted for annual periods beginning after December 15, 2024, with early adoption permitted. This ASU will result in us including the additional required disclosures when adopted and does not otherwise have a material impact on the Company's consolidated financial statements.

In November 2024, the FASB issued ASU 2024-03, *Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures (Subtopic 220-40)*, which requires public entities to disclose disaggregated information about certain income statement line items in the notes to the financial statements. For public entities, ASU 2024-03 is required to be adopted for annual periods beginning after December 15, 2026 and for interim periods beginning after December 15, 2027, with early adoption permitted. This ASU will result in us including the additional required disclosures when adopted and does not otherwise have a material impact on the Company's consolidated financial statements.

3. FAIR VALUE MEASUREMENT

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs as of December 31, 2024 and 2023, as indicated (in thousands):

	Fair Value Measurements at December 31, 2024			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market mutual funds	$ 21,799	$ 21,799	$ —	$ —
Equity securities, at fair value	21,640	—	—	21,640
Available-for-sale debt securities (1)	10,985	—	—	10,985
Debt securities, at fair value (1)	14,814	—	—	14,814
Total assets	$ 69,238	$ 21,799	$ —	$ 47,439

	Fair Value Measurements at December 31, 2023			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market mutual funds	$ 246,425	$ 246,425	$ —	$ —
Equity securities, at fair value	41,046	—	—	41,046
Available-for-sale debt securities (1)	10,484	—	—	10,484
Trading securities held in a "rabbi trust" (1)	496	496	—	—
Total assets	$ 298,451	$ 246,921	$ —	$ 51,530
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	$ 513	$ 513	$ —	$ —
Total liabilities	$ 513	$ 513	$ —	$ —

(1) Included in Prepaids and other current assets and Other long-term assets, net in the consolidated balance sheets.
(2) Included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

The following table provides activity for our Level 3 investments during the periods presented (in thousands):

	Amount
Level 3 investments at December 31, 2022	$ 82,787
Increase due to purchases of Level 3 investments	10,000
Decrease in fair value of Level 3 investments	(41,741)
Accrued interest on Level 3 investments	484
Level 3 investments at December 31, 2023	51,530
Increase due to purchases of Level 3 investments	17,000
Decrease in fair value of Level 3 investments	(21,836)
Accrued interest on Level 3 investments	745
Level 3 investments at December 31, 2024	$ 47,439

4. ASSETS HELD FOR SALE

In December 2023, the Company committed to a plan to sell its corporate headquarters and associated building loan on the corporate headquarters (the disposal group). In September 2024, the Company entered into an agreement with Salt Lake County, a body corporate and politic of the State of Utah, to sell the Company's corporate headquarters and on December 20, 2024 (the "Closing Date"), consummated the final agreement to sell its corporate headquarters for a total sales price of $52.0 million. As a result, the Company recognized an additional write-down loss for the year ended December 31, 2024 of $3.4 million which is included in Other expense, net in its consolidated statements of operations.

In connection with the sale of the corporate headquarters, the Company entered into a lease agreement that allows the Company to continue to occupy and use the corporate headquarter's data center, comprising of approximately 5,000 square feet within the main building, and permit the data center to be served by the existing building generators (the "Data Center Lease"). Among other terms, the Data Center Lease has an initial term of five years, subject to the Company's right to terminate upon providing 30 days' notice to Salt Lake County.

The corporate headquarters was previously subject to a loan obtained by the Company from LoanCore Capital Markets LLC, with an approximate balance amount owed at closing of $34.5 million, that was repaid through a defeasance process on the Closing Date, including through the purchase of certain securities which were substituted as collateral for such loan.

5. ACCOUNTS RECEIVABLE, NET

Accounts receivable, net consist of the following (in thousands):

	December 31,	
	2024	2023
Credit card receivables, trade	$ 9,614	$ 12,081
Accounts receivable, trade	5,282	4,084
Other receivables	3,187	4,553
	18,083	20,718
Less: allowance for credit losses	(2,236)	(1,298)
Total accounts receivable, net	$ 15,847	$ 19,420

6. PREPAIDS AND OTHER CURRENT ASSETS

Prepaids and other current assets consist of the following (in thousands):

	December 31,	
	2024	2023
Prepaid maintenance	$ 8,924	$ 8,282
Prepaid other	3,221	4,206
Other current assets	1,876	2,376
Total prepaids and other current assets	$ 14,021	$ 14,864

7. PROPERTY AND EQUIPMENT, NET

Property and equipment, net (excluding assets held for sale) consist of the following (in thousands):

	December 31,	
	2024	2023
Computer hardware and software, including internal-use software and website development	$ 202,005	$ 249,208
Furniture and equipment	4,098	10,919
Leasehold improvements	1,466	1,795
	207,569	261,922
Less: accumulated depreciation	(184,025)	(234,345)
Total property and equipment, net	$ 23,544	$ 27,577

Capitalized costs associated with internal-use software and website development, both developed internally and acquired externally, and depreciation of costs for the same periods associated with internal-use software and website development consist of the following (in thousands):

	Year ended December 31,		
	2024	2023	2022
Capitalized internal-use software and website development	$ 12,517	$ 11,296	$ 7,915
Depreciation of internal-use software and website development	11,354	7,758	6,571

Depreciation expense is classified within the corresponding operating expense categories in the consolidated statements of operations as follows (in thousands):

	Year ended December 31,		
	2024	2023	2022
Cost of goods sold	$ 396	$ 711	$ 682
Technology	17,150	14,414	12,233
General and administrative	464	3,751	3,742
Total depreciation	$ 18,010	$ 18,876	$ 16,657

During the years ended December 31, 2024 and 2023, we retired $58.6 million and $8.6 million, respectively, of fully depreciated property and equipment that were removed from service in 2024 and 2023.

8. INTANGIBLE ASSETS, NET

On March 6, 2024, we entered into an Intellectual Property Asset Purchase Agreement with Zulily ABC, LLC ("Zulily") to acquire certain intellectual property related to the Zulily brand. The aggregate purchase price, inclusive of direct acquisition-related expenses totaled $4.6 million which has been allocated to two major asset categories consisting of $3.9 million for trade names, with an indefinite useful life, and $676,000 for customer lists, with an estimated useful life of five years.

On March 31, 2024, we entered into an Asset Purchase Agreement with Indo Count Global, Inc. to sell certain intellectual property related to the Wamsutta brand which was acquired as part of our purchase of the Bed Bath & Beyond brand in June 2023, for a total sales price of $10.3 million in cash plus the assumption of certain liabilities. On April 18, 2024, we closed the transaction and received $10.3 million in cash proceeds. For the year ended December 31, 2024, we recognized the entire $10.3 million as a gain on the sale which is included in Other expense, net in our consolidated statements of operations.

Intangible assets, net consist of the following (in thousands):

	December 31,	
	2024	2023
Intangible assets subject to amortization, gross (1)	$ 6,239	$ 5,331
Less: accumulated amortization of intangible assets	(3,145)	(2,114)
Intangible assets subject to amortization, net	3,094	3,217
Intangible assets not subject to amortization	27,152	22,037
Total intangible assets, net	$ 30,246	$ 25,254

(1) At December 31, 2024, the weighted average remaining useful life for intangible assets subject to amortization, gross was 3.4 years.

9. EQUITY SECURITIES

Equity securities consist of the following (in thousands):

	December 31,	
	2024	2023
Equity securities accounted for under the equity method under ASC 323	$ 56,546	$ 114,827
Equity securities accounted for under the equity method under the fair value option	21,640	41,046
Total equity securities	$ 78,186	$ 155,873

The following table includes our equity securities accounted for under the equity method (ASC 323) and related ownership interest as of December 31, 2024:

	Ownership interest
Medici Ventures, L.P.	99%
tZERO Group, Inc.	28%
SpeedRoute, LLC	49%

The carrying amount of our equity method securities was $78.2 million at December 31, 2024, which is included in Equity securities on our consolidated balance sheets, of which $21.6 million is valued under the fair value option (tZERO and SpeedRoute). These investments are valued using Level 3 inputs, which represents 31.3% of assets measured at fair value. For our investments in Medici Ventures, L.P., tZERO, and SpeedRoute there is no difference in the carrying amount of the assets and liabilities and our maximum exposure to loss, and there is no difference between the carrying amount of our investment in Medici Ventures, L.P. and the amount of underlying equity we have in the entity's net assets.

The following table summarizes the net loss recognized on equity method securities recorded in Other expense, net in our consolidated statements of operations (in thousands):

	Years ended December 31,		
	2024	2023	2022
Net loss recognized on our proportionate share of the net assets of our equity method securities	$ (58,281)	$ (98,663)	$ (25,435)
Decrease in fair value of equity method securities held under fair value option	(19,406)	(41,741)	(38,488)

Regulation S-X Rules 4-08(g) and 3-09

In accordance with SEC Rules 4-08(g) and 3-09 of Regulation S-X, we must determine which, if any, of our equity method securities is a "significant subsidiary". Regulation S-X mandates the use of three different tests to determine if any of our equity securities are significant subsidiaries: the investment test, the asset test, and the income test. The table below provides the summarized financial information required by Rule 4-08(g) for those equity method securities in aggregate that have met the significance criteria, presented on a quarterly lag (in thousands):

	December 31,	
Balance Sheet	2024	2023
Assets	$ 63,546	$ 98,544
Liabilities	(17,985)	(17,166)
Equity	$ (45,561)	$ (81,378)

	Years ended December 31,		
Results of Operations	2024	2023	2022
Revenues	$ 12,086	$ 26,404	$ 31,187
Pre-tax loss	(20,778)	(19,895)	(37,619)
Net loss	(20,777)	(20,169)	(37,477)

In accordance with Rule 3-09 of Regulation S-X, separate audited financial statements of Medici Ventures, L.P. for the periods ended September 30, 2024, 2023 and 2022, their fiscal year-ends, are being included as Exhibit 99.3, Exhibit 99.2, and Exhibit 99.1, respectively, and as such are excluded from the table above. In addition, tZERO was deemed not significant for the year ended December 31, 2024, but was significant for the years ended December 31, 2023 and 2022. In accordance with Rule 3-09 of Regulation S-X, separate audited financial statements for tZERO for the years ended December 31, 2023 and 2022, are being included as Exhibit 99.4

10. OTHER LONG-TERM ASSETS, NET

Other long-term assets, net consist of the following (in thousands):

	December 31,	
	2024	2023
Debt securities carried at fair value	$ 14,814	$ —
Available-for-sale debt securities	10,985	10,484
Prepaid other, long-term portion	3,242	1,748
Other long-term assets	412	719
Total other long-term assets, net	$ 29,453	$ 12,951

11. ACCRUED LIABILITIES

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2024	2023
Accrued marketing expenses	$ 27,935	$ 18,830
Accounts payable accruals	12,743	11,079
Allowance for returns	9,526	8,651
Accrued compensation and other related costs	8,345	12,912
Sales and other taxes payable	6,205	7,034
Accrued freight	4,962	8,478
Other accrued expenses	3,898	6,698
Total accrued liabilities	$ 73,614	$ 73,682

12. BORROWINGS

2020 loan agreements

In March 2020, we entered into two loan agreements. The loan agreements provide a $34.5 million Senior Note, carrying interest at an annual rate of 4.242%, and a $13.0 million Mezzanine Note, carrying interest at an annual rate of 5.002%. The loans carry a blended annual interest rate of 4.45%. The Senior Note is for a 10-year term (stated maturity date is March 6, 2030) and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note has a stated 10-year term, though the agreement requires principal and interest payments monthly over approximately a 46-month payment period. Our debt issuance costs and debt discount are amortized using the straight-line basis which approximates the effective interest method.

In January 2024, we repaid the entire balance under the Mezzanine Note and in December 2024, in connection with the sale of our corporate headquarters, repaid the remaining $34.5 million balance under the Senior Note. See Note 4—Assets Held for Sale for further information.

Revolving line of credit

In October 2024, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with BMO Bank N.A. (in such capacity, "BMO"), pursuant to which BMO agrees to lend the Company up to $25.0 million on a one-year revolving line of credit to aid the Company in securing strategic ventures. In connection with the Loan Agreement, BMO issued a revolving line of credit promissory note (the "Revolving Note") and granted a lien on the cash collateral account specified in the Loan Agreement (the "Cash Collateral Account"). The revolving line of credit bears interest on the unpaid principal balance at an annual rate equal to the Secured Overnight Financing Rate, or SOFR rate, for a one-month interest period plus 1.00%, established by the Federal Reserve Bank of New York. The Company is obligated to pay certain commitment fees on undrawn amounts under the Loan Agreement in amounts specified in the Loan Agreement. The Loan Agreement and Revolving Note will terminate on October 18, 2025 and loans thereunder may be borrowed, repaid, and reborrowed up to such date.

As of December 31, 2024, the outstanding balance on the line of credit was $25.0 million, net of $129,000 of capitalized debt issuance costs. Our total outstanding debt on the line of credit is included in Short-term debt, net on our consolidated balance sheets.

The Loan Agreement is subject to limited affirmative covenants and negative covenants, including the requirement that the Company maintain cash in the Cash Collateral Account in an amount that is three percent greater than BMO's aggregate commitments under the Loan Agreement. We are in compliance with our debt covenants and continue to monitor our ongoing compliance with our debt covenants.

13. LEASES

We have operating leases for warehouses, office space, and data centers. Our leases have remaining lease terms of one year to eight years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within one year. Variable lease costs include executory costs, such as taxes, insurance, and maintenance.

Due to the sale of our corporate headquarters, in October 2024, we entered into a sublease agreement to rent the third floor of an office building in Murray, Utah consisting of approximately 36,516 square feet of space that will be used as the Company's new corporate headquarters. The sublease commenced in December 2024 for an initial term of 100 months expiring in March 2033.

The components of lease expense were as follows (in thousands):

	Years ended December 31,		
	2024	2023	2022
Operating lease cost	$ 3,240	$ 5,257	$ 5,975
Variable lease cost	906	1,300	1,489

The following tables provides a summary of other information related to leases (in thousands):

	Years ended December 31,		
	2024	2023	2022
Cash payments included in operating cash flows from lease arrangements	$ 3,253	$ 5,500	$ 6,237
Right-of-use assets obtained in exchange for new operating lease liabilities	7,170	836	437

The following table provides a summary of balance sheet information related to leases:

	December 31,	
	2024	2023
Weighted-average remaining lease term—operating leases	6.65 years	1.57 years
Weighted-average discount rate—operating leases	6 %	7 %

Maturity of lease liabilities under our non-cancellable operating leases as of December 31, 2024, are as follows (in thousands):

Payments due by period	
2025	$ 1,749
2026	1,241
2027	1,127
2028	1,085
2029	1,114
Thereafter	3,497
Total lease payments	9,813
Less interest	2,019
Present value of lease liabilities	$ 7,794

14. OTHER LONG-TERM LIABILITIES

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

	December 31,	
	2024	2023
Unearned revenue, long-term portion	$ 4,583	$ 5,583
Income taxes payable, long-term portion	3,675	3,684
Other long-term liabilities	(349)	(160)
Total other long-term liabilities	$ 7,909	$ 9,107

15. COMMITMENTS AND CONTINGENCIES

Legal proceedings and contingencies

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we have been in the past and we may be in the future subject to judgments requiring us to pay significant damages or associated costs. In some instances, other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees, and costs resulting from such litigation. As a result of such litigation, we may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. The nature of the loss contingencies relating to claims that have been asserted against us are described below.

On September 27, 2019, a purported securities class action lawsuit was filed against us and several of our former executives in the United States District Court of Utah, alleging violations under Section 10(b), Rule 10b-5, Section 20(a), and Section 20A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Several similar lawsuits were filed shortly thereafter, all of which were consolidated into a single lawsuit with the original complaint. The Court appointed The Mangrove Partners Master Fund Ltd. as lead plaintiff in January 2020. In March 2020, lead plaintiff filed amended consolidated complaint. On September 28, 2020, the court granted our motion to dismiss the amended consolidated complaint. The plaintiffs filed another amended complaint in January 2021. On September 20, 2021, the court granted our motion to dismiss that complaint and entered judgment in our favor. Lead plaintiff appealed that decision to the United States Court of Appeals for the Tenth Circuit. On October 18, 2021, lead plaintiff filed a Notice of Appeal, appealing the ruling of the district court to the United States Court of Appeals for the Tenth Circuit. On October 15, 2024, the Tenth Circuit affirmed the District Court's order dismissing the case in its entirety. The matter is now closed.

On November 22, 2019, a stockholder derivative suit was filed against us and certain past and present directors and officers of ours in the United States District Court for the District of Delaware, with allegations that include: (i) breach of fiduciary duties, (ii) unjust enrichment, (iii) insider selling and misappropriation of the Company's information, and (iv) contribution under Sections 10(b) and 21D of the Exchange Act. On December 17, 2019, a similar lawsuit was filed in the same court, naming the same defendants, bringing similar claims, and seeking similar relief. These cases were consolidated into a single lawsuit in January 2020. In March 2020, the court entered a stay on litigation, pending the outcome of the securities class action motion to dismiss. On October 15, 2024, the Tenth Circuit affirmed the district court's order dismissing the securities class action in its entirety. On January 21, 2025, plaintiffs filed a notice of voluntary dismissal of this consolidated derivative suit. The matter is now closed.

We establish liabilities when a particular contingency is probable and estimable which are included in Accrued liabilities in our consolidated balance sheets. At December 31, 2024 and 2023, our established liabilities were not material.

16. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, the

environmental indemnity we entered into in favor of the lenders under our prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

17. STOCKHOLDERS' EQUITY

Common Stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

Preferred stock conversion

On May 12, 2022, Beyond stockholders voted to approve separate proposals to approve the amendment of the Company's Amended and Restated Certificate of Designation for both classes of its preferred stock to provide that each share of our Series A-1 and Series B preferred stock be automatically converted into 0.90 of a share of our common stock (the "Conversion"). On June 10, 2022, in connection with the completion of the Conversion, the Company issued 4,097,697 shares of our common stock in exchange for the outstanding Series A-1 and Series B preferred stock on that date. As the fair value of our common stock issued exceeded the fair value of the Series A-1 and Series B preferred stock exchanged on the Conversion date, we recognized a non-cash deemed dividend to our preferred stockholders of $1.7 million due to the excess fair value per share compared to the conversion ratio. Following the Conversion, the Company eliminated the Series A-1 and Series B preferred stock classes by filing Certificates of Elimination with the Delaware Secretary of State.

JonesTrading Sales Agreement

We entered into a Capital on Demand™ Sales Agreement (the "Sales Agreement") dated June 10, 2024 with JonesTrading Institutional Services LLC ("JonesTrading"), under which we conducted and may in the future conduct "at the market" public offerings of our common stock. Under the Sales Agreement, JonesTrading, acting as our sales agent or principal, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. We have no obligation to sell additional shares under the Sales Agreement, but we may do so from time to time. For the year ended December 31, 2024, we sold 7,002,375 shares of our common stock pursuant to the Sales Agreement and have recognized $43.0 million in proceeds, net of $879,000 of offering costs, including commissions paid to JonesTrading.

Common and Preferred Stock Repurchase Program

On August 17, 2021, we announced that our Board of Directors had approved a stock repurchase program (the "Repurchase Program"), pursuant to which we may, from time to time, purchase shares of our outstanding common stock for an aggregate repurchase price not to exceed $100.0 million at any time through December 31, 2023. On December 21, 2023, we announced that our Board of Directors approved an extension and expansion of the Repurchase Program for an additional two years and expanded the repurchase amount by $50.0 million, for a total repurchase amount of up to $150.0 million of our common stock. The Repurchase Program expires in December 2025.

Repurchases under the Repurchase Program may be effected through open market purchases. The Repurchase Committee designated by the Board of Directors will determine the actual timing, number, and value of any shares repurchased under the Repurchase Program in its discretion using factors including, but not limited to, our stock price and trading volume, general market conditions, and the ongoing assessment of our capital needs. There is no assurance of the number or aggregate price of any shares that we will ultimately repurchase under the Repurchase Program, which may be extended, suspended, or terminated at any time by the Board of Directors.

For the years ended December 31, 2024 and 2023, we did not repurchase any shares of our common stock under the Repurchase Program. For the year ended December 31, 2022, we repurchased $79.8 million of our common stock and $306,000 of our Series A-1 preferred stock under the Repurchase Program at average prices of $32.41 and $42.16 per share, respectively. For the year ended December 31, 2022, we retired 7,244 shares of our Series A-1 preferred stock treasury stock which had been previously repurchased under the Repurchase Program. The retirement increased Accumulated deficit by $306,000. As of December 31, 2024, we had $69.9 million available for future share repurchases under our current repurchase authorization through December 31, 2025.

18. STOCK-BASED AWARDS

We have equity incentive and compensatory plans that provide for the grant of stock-based awards, including restricted stock and performance shares, to employees and board members and provide employees the ability to purchase shares of our common stock through an employee stock purchase plan. Employee accounting applies to equity incentives and compensation granted by the Company to its own employees. When an award is forfeited prior to the vesting date, we recognize an adjustment for the previously recognized expense in the period of the forfeiture.

Stock-based compensation expense is classified within the corresponding operating expense categories on our consolidated statements of operations as follows (in thousands):

	Years ended December 31,		
	2024	2023	2022
Cost of goods sold	$ 7	$ 37	$ 132
Sales and marketing	594	796	693
Technology	6,263	8,733	7,659
General and administrative	12,391	13,452	9,834
Total stock-based compensation expense	$ 19,255	$ 23,018	$ 18,318

Beyond restricted stock unit awards

The Beyond, Inc. Amended and Restated 2005 Equity Incentive Plan provides for the grant of restricted stock units and other types of equity awards to employees and directors of the Company. The Compensation Committee of the Board of Directors approves grants of restricted stock unit awards to our officers, board members and employees. These restricted stock unit awards generally vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.4% at the end of the third year; subject to the recipient's continuing service to us. During the first quarter of fiscal 2024, we changed our vesting schedule for newly granted restricted stock units from three years to four years. These restricted stock unit awards will vest at 25% each year. For the year ended December 31, 2024, we granted 212,950 restricted stock awards with a cumulative grant date fair value of $6.9 million under the new vesting schedule.

The cost of restricted stock units is determined using the fair value of our common stock on the date of the grant and compensation expense is either recognized on a straight-line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date.

Performance Shares

During the year ended December 31, 2024, we granted 1,512,500 performance-based shares ("PSUs") to our executive management team. A portion of each grant of PSUs (25%) is eligible to vest based on our net revenue performance and the remaining portion (75%) is eligible to vest based on our stock price performance. The PSUs tied to stock price performance will be eligible to vest in three installments upon the achievement of three separate stock price hurdles during the three-year period following the grant date, with 33% of the PSUs earned if the average per-share closing price of our common stock over any 20 consecutive trading day period equals or exceeds $40.00 per share (but in no event prior to the first anniversary of the grant date), 33% of the PSUs earned if the average per-share closing price of our common stock over any 20 consecutive trading day period equals or exceeds $50.00 per share (but in no event prior to the second anniversary of the grant date), and 34% of the PSUs earned if the average per share closing price of our common stock over any 20 consecutive trading day period equals or exceeds $60.00 per share (but in no event prior to the third anniversary of the grant date), in each case subject to the recipient’s

continued service through the vesting date. If a stock price hurdle is not achieved during the three years following the grant date, the portion of the award tied to such stock price hurdle will be forfeited.

The PSUs tied to net revenue performance will vest based on our net revenue over three years, with one-third of the PSUs eligible to vest on each of the first, second, and third anniversaries of the grant date, subject to the recipient's continued service through the vesting date. To be eligible to vest in any tranche of the PSUs tied to net revenue performance, we must meet the GAAP net revenue goal established for the applicable year.

For the portion of the PSUs that vest based on our net revenue performance, we recognize expense as compensation cost, the fair value on the date of grant over the performance period, taking into account the probability that we will satisfy the performance goals. For the portion of the PSUs that vest based on stock price hurdles, which is a market condition, we use a Monte Carlo valuation model to estimate the fair value as of the date of grant and expense compensation cost over the vesting period regardless of whether the market condition is ultimately satisfied.

Weighted-average assumptions used in the Monte Carlo valuation model were as follows:

	December 31, 2024
Expected volatility	72.27 %
Risk-free interest rate	4.33 %
Expected term	2.99 years
Expected dividend yield	0.00 %

Stock-based compensation related to the PSUs is included in the stock-based compensation expense table above combined with the expense associated with our restricted stock units, performance share options, and ESPP. Stock-based compensation related to the PSUs was $5.9 million for the year ended December 31, 2024.

Performance Share Options

During the year ended December 31, 2024, we granted a performance-based option to purchase 2,250,000 shares of our common stock to our Executive Chairman of the Board of Directors (the "Performance Share Option"). The Performance Share Option will be eligible to vest in three installments upon the achievement of three separate stock price hurdles during the four-year period following the grant date, with 500,000 of the shares subject to the Performance Share Option, having an exercise price of $45.00 per share, becoming vested if the average per-share closing price of our common stock over any 20 consecutive trading day period following the grant date but on or prior to the second anniversary of the grant date equals or exceeds $45.00 per share (but in no event will this tranche vest prior to the first anniversary of the grant date); 750,000 of the shares subject to the Performance Share Option, having an exercise price of $50.00 per share, becoming vested if the average per-share closing price of our common stock over any 20 consecutive trading day period following the grant date but on or prior to the third anniversary of the grant date equals or exceeds $50.00 per share (but in no event will this tranche vest prior to the second anniversary of the grant date); and 1,000,000 of the shares subject to the Performance Share Option, having an exercise price of $60.00 per share, becoming vested if the average per-share closing price of our common stock over any 20 consecutive trading day period following the grant date but on or prior to the fourth anniversary of the grant date equals or exceeds $60.00 per share (but in no event will this tranche vest prior to the third anniversary of the grant date), in each case subject to the Executive Chairman's continued service through the vesting date. If a stock price hurdle is not achieved during the performance period following the grant date, the portion of the award tied to such stock price hurdle will be forfeited.

The fair value of the Performance Share Option is determined using a Monte Carlo valuation model to estimate the fair value as of the date of grant and we will expense compensation cost over the vesting period regardless of whether the market condition is ultimately satisfied.

Weighted-average assumptions used in the Monte Carlo valuation model were as follows:

	December 31, 2024
Expected volatility	75.42 %
Risk-free interest rate	4.42 %
Expected term	3.75 years
Expected dividend yield	0.00 %

Stock-based compensation related to the Performance Share Option is included in stock-based compensation expense table above combined with the expense associated with our restricted stock units, PSUs, and ESPP. Stock-based compensation related to the performance share options was $2.4 million for the year ended December 31, 2024.

The following table summarizes restricted stock unit, PSU, and Performance Share Option award activity (in thousands, except fair value data):

	2024		2023		2022	
	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	984	$ 29.60	781	$ 50.17	663	$ 56.37
Granted at fair value	4,068	10.68	1,101	20.92	618	42.75
Vested	(441)	35.33	(550)	40.27	(295)	43.32
Forfeited	(1,047)	18.89	(348)	31.43	(205)	57.77
Outstanding—end of year	3,564	$ 20.98	984	$ 29.60	781	$ 50.17

At December 31, 2024, 2.5 million shares of stock remained available for future grants under the Plan.

Employee Stock Purchase Plan

The 2021 Employee Stock Purchase Plan (the "ESPP") grants our eligible employees a right to purchase shares of our common stock at a discount through payroll deductions of up to 25% of eligible compensation, subject to a cap of $21,250 in any calendar year. The ESPP provides for consecutive 24-month offering periods beginning March 1 and September 1 of each year. Each offering period shall consist of four consecutive six-month purchase periods. The first offering period under the ESPP commenced on September 1, 2021, with the first purchase date occurring on February 28, 2022.

On each purchase date, participating employees will purchase shares of our common stock at a price per share equal to 85% of the lesser of the fair market value of our common stock on (i) the offering date of the offering period or (ii) the purchase date (the "look-back" period). If the stock price of our common stock on any purchase date in an offering period is lower than the stock price on the offering date of that offering period, every participant in the offering will automatically be withdrawn from the offering after the purchase of shares on such purchase date and automatically enrolled in a new offering period commencing immediately subsequent to such purchase date.

The maximum number of shares of common stock that may be issued under the ESPP in aggregate is 3.0 million shares. For the years ended December 31, 2024 and 2023, 119,425 shares and 117,687 shares, respectively were purchased at an average price per share of $12.23 and $16.25, respectively. At December 31, 2024, approximately 2.7 million shares of common stock remained available under the ESPP.

The ESPP is considered a compensatory plan and the fair value of the discount and the look-back period will be estimated using the Black-Scholes option pricing model and expense will be recognized straight-line over the 24-month offering period. We recognized $1.1 million, $1.7 million and $2.4 million in share-based compensation expense related to the ESPP for the years ended December 31, 2024, 2023 and 2022, respectively, which are included in the stock compensation expense table above combined with the expense associated with our restricted stock units.

19. EMPLOYEE RETIREMENT PLAN

We have a 401(k) defined contribution plan which permits participating employees to defer a portion of their compensation, subject to limitations established by the Internal Revenue Code. During the years ended December 31, 2024, 2023 and 2022, employees who completed 3 months of service and are 21 years of age or older are qualified to participate in the plan which matches 100% of the first 6% of each participant's contributions to the plan subject to IRS limits. Matching contributions vest immediately. Participant contributions also vest immediately. Our matching contribution totaled $4.3 million, $5.0 million and $5.7 million for the years ended December 31, 2024, 2023 and 2022, respectively. We made no discretionary contributions to eligible participants for the years ended December 31, 2024, 2023 and 2022, respectively.

20. REVENUE AND CONTRACT LIABILITY

Unearned revenue

Unearned revenue consists of the following (in thousands):

	December 31,	
	2024	2023
Loyalty program membership fees and reward points	$ 13,918	$ 16,449
In store credits	11,462	11,947
Unearned product revenue on undelivered product	11,192	14,821
Unearned product revenue on unshipped orders	3,610	4,098
Other	2,913	2,282
Total unearned revenue	$ 43,095	$ 49,597

The following table provides information about unearned revenue from contracts with customers, including significant changes in unearned revenue balances during the period (in thousands):

	Amount
Unearned revenue at December 31, 2022	$ 44,480
Increase due to deferral of revenue at period end, net	35,290
Decrease due to beginning contract liabilities recognized as revenue	(30,173)
Unearned revenue at December 31, 2023	49,597
Increase due to deferral of revenue at period end, net	32,802
Decrease due to beginning contract liabilities recognized as revenue	(39,304)
Unearned revenue at December 31, 2024	$ 43,095

Our total unearned revenue related to outstanding loyalty program rewards was $11.1 million and $12.1 million at December 31, 2024 and 2023, respectively. Breakage income related to loyalty program rewards and gift cards is recognized in Net revenue in our consolidated statements of operations. Breakage included in revenue was $7.2 million, $5.1 million, and $4.4 million for the years ended December 31, 2024, 2023, and 2022, respectively. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations. At December 31, 2024 and 2023, we had an additional $4.6 million and $5.6 million, respectively, of unearned contract revenue classified within Other long-term liabilities on our consolidated balance sheets.

Sales returns allowance

The following table provides additions to and deduction from the sales returns allowance, which is included in our Accrued liabilities balance in our consolidated balance sheets (in thousands):

	Amount
Allowance for returns at December 31, 2021	$ 13,923
Additions to the allowance	161,492
Deductions from the allowance	(165,193)
Allowance for returns at December 31, 2022	10,222
Additions to the allowance	121,939
Deductions from the allowance	(123,510)
Allowance for returns at December 31, 2023	8,651
Additions to the allowance	105,353
Deductions from the allowance	(104,478)
Allowance for returns at December 31, 2024	$ 9,526

21. INTEREST INCOME, NET

Interest income, net consisted of the following (in thousands):

	Years ended December 31,		
	2024	2023	2022
Interest income	$ 8,968	$ 13,769	$ 4,903
Interest expense	(2,203)	(1,762)	(1,938)
Total interest income, net	$ 6,765	$ 12,007	$ 2,965

22. OTHER EXPENSE, NET

Other expense, net consisted of the following (in thousands):

	Years ended December 31,		
	2024	2023	2022
Gain on sale of intangible assets	$ 10,275	$ —	$ —
Gain on disposal of cryptocurrencies	—	6,361	—
Loss from equity method securities	(77,687)	(140,404)	(63,923)
Write-down of assets held for sale	(3,385)	(25,875)	—
Loss on debt securities carried at fair value	(2,430)	—	—
Loss on equity securities	—	(36)	(137)
Other	(680)	(70)	235
Total other expense, net	$ (73,907)	$ (160,024)	$ (63,825)

23. INCOME TAXES

For financial reporting purposes, loss before income taxes includes the following components (in thousands):

	Years ended December 31,		
	2024	2023	2022
United States loss	$ (259,395)	$ (267,058)	$ (35,272)
Foreign income	1,284	936	1,420
Total loss before income taxes	$ (258,111)	$ (266,122)	$ (33,852)

The provision for income taxes for 2024, 2023 and 2022 consists of the following (in thousands):

	Years ended December 31,		
	2024	2023	2022
Current:			
Federal	$ —	$ (55)	$ 802
State	167	369	1,874
Foreign	233	58	112
Total current	400	372	2,788
Deferred:			
Federal	119	37,160	(1,275)
State	118	4,201	(50)
Foreign	47	(13)	(79)
Total deferred	284	41,348	(1,404)
Total provision for income taxes	$ 684	$ 41,720	$ 1,384

The provision for income taxes for 2024, 2023 and 2022 differ from the amounts computed by applying the U.S. federal income tax rate of 21% to loss before income taxes for the following reasons (in thousands):

	Year ended December 31,		
	2024	2023	2022
U.S. federal income tax benefit at statutory rate	$ (54,203)	$ (55,886)	$ (7,109)
State income tax expense, net of federal benefit	(9,444)	(12,297)	(1,170)
Research and development credit	(2,071)	(3,245)	(2,956)
Global intangible low-tax income	360	(736)	919
Other, net	391	(1)	(67)
Non-deductible executive compensation	1,286	762	905
Stock-based compensation expense	728	2,477	219
Change in valuation allowance	63,637	110,646	10,643
Total provision for income taxes	$ 684	$ 41,720	$ 1,384

The components of our deferred tax assets and liabilities as of December 31, 2024 and 2023 are as follows (in thousands):

	December 31,	
	2024	2023
Deferred tax assets:		
Net operating loss carryforwards	$ 73,925	$ 29,440
Basis difference in equity securities	53,335	34,729
Capitalized software development	33,064	25,840
Research and development tax credits	26,040	24,202
Unearned revenue	7,324	7,925
Accrued expenses	3,325	4,275
Reserves and other	2,270	2,551
Operating lease liabilities	1,902	861
Other tax credits and carryforwards	261	270
Property and equipment, net held for sale	—	6,484
Intangible assets	—	117
Gross deferred tax assets	201,446	136,694
Valuation allowance	(195,742)	(132,105)
Total deferred tax assets	5,704	4,589
Deferred tax liabilities:		
Property and equipment, net	(3,378)	(3,125)
Operating lease right-of-use assets	(1,664)	(786)
Intangible assets	(487)	—
Prepaid expenses	(368)	(587)
Total deferred tax liabilities	(5,897)	(4,498)
Total deferred tax assets (liabilities), net	$ (193)	$ 91

At December 31, 2024, we have federal net operating loss carryforwards with no expiration date of approximately $283.2 million; the utilization of these net operating loss carryforwards is limited to 80% of taxable income in any given year. We have state net operating loss carryforwards with no expiration date of approximately $115.2 million; the utilization of these net operating loss carryforwards is limited to 80% of taxable income in the state in any given year. We also have state net operating loss carryforwards of approximately $169.0 million that expire between 2033 and 2044.

At December 31, 2024, we have federal research credit carryforwards of approximately $30.9 million that expire between 2031 and 2044. We also have state research credit carryforwards of approximately $9.9 million that expire between 2025 and 2038. Ownership changes under Internal Revenue Code Section 382 could limit the amount of net operating losses or credit carryforwards that can be used in the future.

Each quarter we assess on a jurisdictional basis whether it is more likely than not that our deferred tax assets will be realized under ASC Topic 740. We have no carryback ability, and therefore we must rely on future taxable income, including tax planning strategies and future reversals of taxable temporary differences, to recover our deferred tax assets. We assess available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. A significant piece of objective negative evidence evaluated as of December 31, 2024, is our cumulative loss position over a three-year period. Such objective negative evidence limits our ability to consider other more subjective evidence such as our projections for future growth. On the basis of this evaluation we intend to maintain a valuation allowance against our deferred tax assets for the U.S. jurisdiction, not supported by reversals of taxable temporary differences. For the year ended December 31, 2024, the total increase in the valuation allowance was $63.6 million. We intend to continue maintaining a valuation allowance on our net U.S. deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. The amount of the deferred tax asset considered realizable could be adjusted if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth. We will continue to monitor the need for a valuation allowance against our deferred tax assets on a quarterly basis.

A reconciliation of the beginning and ending unrecognized tax benefits, excluding interest and penalties, as of December 31, 2024, 2023 and 2022 is as follows (in thousands):

	Year ended December 31,		
	2024	2023	2022
Beginning balance	$ 15,020	$ 13,488	$ 11,961
Additions for tax positions related to the current year	1,121	1,258	1,083
Additions (reductions) for tax positions taken in prior years	(452)	274	444
Ending balance	$ 15,689	$ 15,020	$ 13,488

Included in the balance of unrecognized tax benefits as of December 31, 2024, 2023 and 2022, are approximately $15.7 million, $15.0 million, and $13.5 million, respectively, of tax benefits that, if recognized, and the valuation allowance against our net deferred tax assets were released, would affect the effective tax rate. We believe it is reasonably possible that these unrecognized tax benefits will continue to increase in the future.

Accrued interest and penalties on unrecognized tax benefits as of December 31, 2024 and 2023 were $1.4 million and $1.3 million, respectively.

We are subject to taxation in the United States and various state and foreign jurisdictions. Tax years beginning in 2020 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used.

As we repatriate foreign earnings for use in the United States, the distributions will generally be exempt from federal and foreign income taxes but may be subject to certain state taxes. As of December 31, 2024, the cumulative amount of foreign earnings considered permanently reinvested upon which taxes have not been provided, and the corresponding unrecognized deferred tax liability, was not material.

24. NET LOSS PER SHARE

The following table sets forth the computation of basic and diluted net loss per common share for the periods indicated (in thousands, except per share data):

	Year ended December 31,		
	2024	2023	2022
Numerator:			
Net loss	$ (258,795)	$ (307,842)	$ (35,236)
Less: Preferred stock dividends—issued	—	—	1,697
Net loss attributable to common stockholders	$ (258,795)	$ (307,842)	$ (36,933)
Denominator:			
Weighted average shares of common shares outstanding—basic	46,542	45,214	44,323
Weighted average shares of common shares outstanding—diluted	46,542	45,214	44,323
Net loss per share of common stock:			
Basic	$ (5.56)	$ (6.81)	$ (0.83)
Diluted	$ (5.56)	$ (6.81)	$ (0.83)

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Year ended December 31,		
	2024	2023	2022
Restricted stock units, PSUs, and Performance Share Option	2,647	984	781
Employee stock purchase plan	190	186	116

25. BUSINESS SEGMENTS

Segment Operations: We currently have one reportable segment, which is our Retail business. The reportable segment is comprised of our Overstock.com operating segment and our Bed Bath & Beyond operating segment, which are aggregated into a single reportable Retail segment due to their similar economic characteristics and business activities. The Bed Bath & Beyond operating segment includes results from our Zulily brand, which are not material to the business and are not separately reviewed by the Chief Operating Decision Maker. The reporting segment primarily derives revenues from e-commerce sales of home furnishing merchandise through our suite of websites and mobile apps.

The accounting policies of the Retail segment are the same as those described in the summary of significant accounting policies. The Chief Operating Decision Maker (CODM), who is our Executive Chairman of the Board of Directors, makes resource allocation decisions based on reports that focus predominantly on Net Revenues, Gross Profit, Sales and Marketing as a percentage of Gross Profit, Technology, and General & Administrative expenses as a percentage of Gross Profit, as well as Operating Income (Loss) measured under GAAP, as reported on our Consolidated Statement of Operations. The CODM also receives our Consolidated Cash and Cash Equivalents balance as a measure of liquidity as reported on our Consolidated Balance Sheet. The CODM uses Operating Income (Loss) to evaluate income generated from segment resources in deciding whether to reinvest profits into the retail segment or into other parts of the entity, such as to make acquisitions or investments. The CODM also uses Operating Income (Loss) to monitor budget versus actual results. The monitoring of budgeted versus actual results is used in assessing performance of the segment and in establishing bonus metrics.

Cost of Goods Sold, Sales & Marketing, Technology, General & Administrative, and Customer Service and Merchant Fees, as reported on our Consolidated Statement of Operations, are significant expenses evaluated by our CODM. The measure of segments assets is reported on the Consolidated Balance Sheet as Cash and Cash Equivalents.

26. SUBSEQUENT EVENTS

Buy Buy Baby

On January 30, 2025, the Company entered into an asset purchase agreement with BBBY Acquisition Co. LLC to acquire the rights of the Buy Buy Baby brand, as well as assets, information and content related to the associated Buy Buy Baby website, including trademarks, domain names, data, information, content, select contractual rights, and goodwill associated with the brand for a total purchase price of $5.0 million payable at the closing of the transaction following a due diligence period. In addition, we are assuming an immaterial amount of outstanding payable liabilities owed to existing Buy Buy Baby merchandise vendors through supplier transition agreements signed directly with the vendors. On February 21, 2025, we closed the transaction and paid the total purchase price of $5.0 million at closing.

Kirkland's Stores, Inc.

On February 5, 2025, the stockholders of Kirkland's voted to approve the conversion of $8.5 million of Kirkland's convertible debt (plus accrued interest) held by the Company into shares of Kirkland's common stock. Further, Kirkland's stockholders also voted to approve the Company’s incremental $8 million investment in Kirkland's in exchange for receiving shares in Kirkland's common stock pursuant to a Subscription Agreement and Investor Rights Agreement. Upon the approval of the Conversion and the Subscription Agreement, the Company owns a total of approximately 40% of Kirkland’s outstanding shares of common stock leaving the $8.5 million of Kirkland's non-convertible promissory note (plus accrued interest) remaining.

The Container Store Group, Inc.

On January 31, 2025, the Company terminated the agreements entered into with The Container Store Group in October 2024 as previously disclosed in our Form 10-Q for the quarter ended September 30, 2024 filed with the SEC on October 25, 2024.

Schedule II
Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Year	Charged to Expense	Deductions	Balance at End of Year
Year ended December 31, 2024				
Deferred tax valuation allowance	$ 132,105	$ 63,637	$ —	$ 195,742
Allowance for sales returns	8,651	105,353	104,478	9,526
Allowance for doubtful accounts	1,298	938	—	2,236
Year ended December 31, 2023				
Deferred tax valuation allowance	$ 21,459	$ 110,646	$ —	$ 132,105
Allowance for sales returns	10,222	121,939	123,510	8,651
Allowance for doubtful accounts	3,223	(1,925)	—	1,298
Year ended December 31, 2022				
Deferred tax valuation allowance	$ 11,384	$ 10,075	$ —	$ 21,459
Allowance for sales returns	13,923	161,492	165,193	10,222
Allowance for doubtful accounts	2,429	794	—	3,223

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation of our disclosure controls and procedures as required by Rule 13a-15(e) and 15d-15(e) of the Exchange Act under the supervision and with the participation of our principal executive officer and principal financial officer, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the level of reasonable assurance.

Limitations on Disclosure Controls and Procedures

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Internal Control Over Financial Reporting

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

Management's Report on Internal Control over Financial Reporting

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

Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2024. In making our assessment of the effectiveness of internal control over financial reporting, management used the criteria set forth in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this assessment, management has concluded that, as of December 31, 2024, our internal control over financial reporting was effective.

The effectiveness of our internal control over financial reporting as of December 31, 2024 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included below.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Beyond, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Beyond, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2024, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2024, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2024 and 2023, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2024, and the related notes and financial statement schedule II (collectively, the consolidated financial statements), and our report dated February 25, 2025 expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

/s/ KPMG LLP

Salt Lake City, Utah
February 25, 2025

ITEM 9B. OTHER INFORMATION

(a) Disclosure in lieu of reporting on a Current Report on Form 8-K.

None.

(b) Insider trading arrangements and policies.

On November 11, 2024, Dave Nielsen, President of the Company, adopted a trading plan intended to satisfy the affirmative defense of Rule 10b5-1(c) to sell up to 5,528 shares of Beyond, Inc. common stock between March 5, 2025 and December 31, 2025, subject to certain conditions.

On November 11, 2024, Adrianne Lee, Chief Financial & Administrative Officer of the Company, adopted a trading plan intended to satisfy the affirmative defense of Rule 10b5-1(c) to sell up to 4,400 shares of Beyond, Inc. common stock between March 5, 2025 and December 31, 2025, subject to certain conditions.

In the fourth quarter of 2024, other than Mr. Nielsen and Ms. Lee, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our Executive Officers required by Item 10 of Part III is set forth in Part I, Item 1 Business under "Information About Our Executive Officers." We have adopted a Code of Business Conduct and Ethics ("Code"), which applies to all employees of the Company, including our principal executive officer, principal financial officer, and principal accounting officer or controller, or persons performing similar functions. We intend to disclose any amendments to the Code and any waivers granted to our principal executive officer, principal financial officer or principal accounting officer or other persons to the extent required by applicable rules or regulations in the Investor Relations section of our Website, www.beyond.com. We will provide a copy of the Code to any person without any charge upon request in writing addressed to Beyond, Inc. Attn: Investor Relations, 433 West Ascension Way, 3rd Floor, Murray, UT 84123.

The remaining information required by this Item be included in our definitive proxy statement for our 2025 annual meeting of stockholders, which proxy statement will be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2024, and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item be included in our definitive proxy statement for our 2025 annual meeting of stockholders, which proxy statement will be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2024, and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item be included in our definitive proxy statement for our 2025 annual meeting of stockholders, which proxy statement will be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2024, and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item be included in our definitive proxy statement for our 2025 annual meeting of stockholders, which proxy statement will be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2024, and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Our independent registered public accounting firm is KPMG LLP, Salt Lake City, Utah, Auditor Firm ID: 185.

The remaining information required by this Item be included in our definitive proxy statement for our 2025 annual meeting of stockholders, which proxy statement will be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2024, and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) **Financial Statements:**

The financial statements are filed as part of this Annual Report on Form 10-K under "Item 8. Financial Statements and Supplementary Data."

(2) **Financial Statement Schedules:**

Schedule II Valuation and Qualifying Accounts is provided in "Item 8. Financial Statements and Supplementary Data." Other schedules have been omitted as they are either not required, not applicable, or the information has otherwise been shown in the consolidated financial statements or notes thereto under "Item 8. Financial Statements and Supplementary Data."

(3) **Exhibits:**

See exhibits listed under Part (b) below.

(b) Exhibits

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
2.1*	Asset Purchase Agreement, dated June 12, 2023, by and among Overstock.com, Inc., Bed Bath & Beyond Inc. and certain subsidiaries of Bed Bath & Beyond Inc.	8-K	000-49799	2.1	June 13, 2023	
3.1	Amended and Restated Certificate of Incorporation	10-Q	000-49799	3.1	July 29, 2014	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation	8-K	000-49799	3.2	November 6, 2023	
3.3	Certificate of Amendment to Amended and Restated Certificate of Incorporation of Beyond, Inc.	8-K	001-41850	3.1	May 24, 2024	
3.4	Fourth Amended and Restated Bylaws	8-K	001-41850	3.3	May 24, 2024	
4.1	Form of specimen common stock certificate	S-1/A	333-83728	4.1	May 6, 2002	
4.2	Description of Securities Registered Under Section 12 of the Securities Exchange Act of 1934					X
4.3	Form of Indenture	S-3ASR	333-280076	4.3	June 10, 2024	
10.1[(a)]	Form of Indemnification Agreement between Overstock.com, Inc. and each of its directors and officers	10-K	000-49799	10.1	March 18, 2019	
10.2[(a)]	Amended and Restated 2005 Equity Incentive Plan	8-K	000-49799	10.1	May 23, 2023	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.3[(a)]	Amendment to the Amended and Restated 2005 Equity Incentive Plan	8-K	001-41850	10.1	May 24, 2024	
10.4[(a)]	Form of Performance Share Award Grant Notice and Performance Share Award Agreement under the Beyond, Inc. Amended and Restated 2005 Equity Incentive Plan *	10-Q	001-41850	10.1	May 8, 2024	
10.5[(a)]	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the Beyond, Inc. Amended and Restated 2005 Equity Incentive Plan	10-Q	001-41850	10.4	July 31, 2024	
10.6[(a)]	Executive Chairman Performance Award Grant Notice and Award Agreement	8-K	001-41850	10.2	May 24, 2024	
10.7	Agreement for Purchase and Sale of Real Property and Escrow Instructions, dated September 16, 2024, between Peace Coliseum, LLC and Salt Lake County	8-K	001-41850	10.1	September 17, 2024	
10.8[(a)]	Summary of Unwritten Compensation Arrangements Applicable to Non-Employee Directors of Overstock.com, Inc.	10-K	000-49799	10.16	March 13, 2020	
10.9[(a)]	Key Employee Severance Plan	8-K	000-49799	10.1	March 24, 2023	
10.10	Transaction Agreement, dated as of January 25, 2021, by and among Overstock.com, Inc., Medici Ventures, Inc., Pelion MV GP, L.L.C. and Pelion, Inc., as guarantor	8-K	000-49799	10.1	January 25, 2021	
10.11	Medici Ventures, L.P. Limited Partnership Agreement, dated as of April 23, 2021, between Overstock.com, Inc., and Pelion MV GP, L.L.C.	8-K	000-49799	10.1	April 26, 2021	
10.12	First Amendment, dated August 30, 2021, to the Medici Ventures, L.P. Limited Partnership Agreement, dated April 23, 2021, between Overstock.com, Inc., and Pelion MV GP, L.L.C.	10-Q	000-49799	10.1	November 4, 2021	
10.13[(a)]	2021 Employee Stock Purchase Plan	DEF 14A	000-49799	Annex A	March 25, 2021	
10.14[(a)]	Employment Letter Agreement between Beyond, Inc. and David Nielsen, dated as of February 18, 2024	10-Q	001-41850	10.1	May 8, 2024	
10.15[(a)]	Employment Letter Agreement between Beyond, Inc. and Chandra Holt, dated as of February 14, 2024	10-Q	001-41850	10.1	May 8, 2024	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.16[(a)]	Severance Agreement and Release between Beyond, Inc. and Chandra Holt, effective July 13, 2024	10-Q	001-41850	10.1	July 31, 2024	
10.17[(a)]	Employment Letter Agreement between Beyond, Inc. and Adrianne Lee, dated as of February 18, 2024	10-Q	001-41850	10.1	May 8, 2024	
10.18	Term Loan Credit Agreement by and between Kirkland's Stores, Inc., as Lead Borrower, the Borrowers named therein, the Guarantors named therein, Beyond, Inc., as Administrative Agent and Collateral Agent and the Lenders party thereto, dated as of October 21, 2024					X
10.19	Subscription Agreement by and between Kirkland's, Inc. and Beyond, Inc., dated as of October 21, 2024,					X
10.20	Investor Rights Agreement by and between Kirkland's, Inc. and Beyond, Inc., dated as of October 21, 2024					X
10.21	Collaboration Agreement by and between Kirkland's, Inc. and Beyond, Inc., dated as of October 21, 2024					X
10.22	Trademark License Agreement by and between Kirkland's, Inc. and Beyond, Inc., dated as of October 21, 2024					X
10.23	Loan and Security Agreement among BMO Bank N.A., as Lender, Beyond, Inc., as Borrower, and the other parties thereto, dated as of October 18, 2024					X
10.24	Revolving Note dated October 18, 2024					X
19	Insider Trading Policy					X
21	Subsidiaries of the Registrant	10-K	001-41850	21	February 23, 2024	
23.1	Consent of Independent Registered Public Accounting Firm					X
23.2	Consent of Ernst & Young related to Exhibit 99.1					X
23.3	Consent of Ernst & Young related to Exhibit 99.2					X
23.4	Consent of Ernst & Young related to Exhibit 99.3					X
23.5	Consent of Baker Tilly related to Exhibit 99.4					X

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
24	Powers of Attorney (see signature page)					X
31.1	Certification of Principal Executive Officer					X
31.2	Certification of Principal Financial Officer					X
32.1	Section 1350 Certification of Principal Executive Officer					X
32.2	Section 1350 Certification of Principal Financial Officer					X
97	Incentive Compensation Recovery Policy	10-K	001-41850	97	February 23, 2024	
99.1	Audited financial statements of Medici Ventures, L.P. as of and for the period ended September 30, 2022	10-K	000-49799	99.2	February 24, 2023	
99.2	Audited financial statements of Medici Ventures, L.P. as of and for the period ended September 30, 2023	10-K	001-41850	99.3	February 23, 2024	
99.3	Audited financial statements of Medici Ventures, L.P. as of and for the period ended September 30, 2024					X
99.4	Audited financial statements of tZERO Group, Inc. as of and for the periods ended December 31, 2023 and 2022	10-K/A	001-41850	99.5	October 31, 2024	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
101	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2024 formatted in Inline XBRL: (i) Consolidated Balance Sheets at December 31, 2024 and 2023; (ii) Consolidated Statements of Operations for the years ended December 31, 2024, 2023, and 2022; (iii) Consolidated Statements of Comprehensive Loss for the years ended December 31, 2024, 2023, and 2022; (iv) Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2024, 2023, and 2022; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2024, 2023, and 2022; and (vi) Notes to Consolidated Financial Statements					X
104	The cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2024, formatted in Inline XBRL (included as Exhibit 101)					X

* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Reporting Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

(a) Management contract or compensatory plan or arrangement.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, on February 25, 2025.

BEYOND, INC.
By: /s/ DAVID J. NIELSEN
David J. Nielsen
President (Principal Executive Officer)

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

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of David J. Nielsen and Adrianne B. Lee, his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and conforming all that said attorney-in-fact, or his or their substitute or substitutes, may do or cause to be done by virtue hereof.

Signature	Title	Date
/s/ DAVID J. NIELSEN David J. Nielsen	President (Principal Executive Officer)	February 25, 2025
/s/ MARCUS A. LEMONIS Marcus A. Lemonis	Executive Chairman of the Board of Directors	February 25, 2025
/s/ ADRIANNE B. LEE Adrianne B. Lee	Chief Financial & Administrative Officer (Principal Financial Officer and Principal Accounting Officer)	February 25, 2025
/s/ JOANNA C. BURKEY Joanna C. Burkey	Director	February 25, 2025
/s/ BARCLAY F. CORBUS Barclay F. Corbus	Director	February 25, 2025
/s/ JOSEPH J. TABACCO, JR. Joseph J. Tabacco, Jr.	Director	February 25, 2025
/s/ ROBERT J. SHAPIRO Robert J. Shapiro	Director	February 25, 2025
/s/ WILLIAM B. NETTLES, JR. William B. Nettles, Jr.	Director	February 25, 2025

Exhibit 4.2

DESCRIPTION OF SECURITIES REGISTERED UNDER SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following information describes our common stock, par value $0.0001 per share, which is the only class of our securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, as well as certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws. This description is only a summary. For a complete statement of the terms and rights of the common stock, you should also refer to our amended and restated certificate of incorporation and amended and restated bylaws which are filed with the Securities and Exchange Commission, as well as the General Corporation Law of the State of Delaware ("DGCL").

Capital Stock

Our authorized capital stock consists of 100,000,000 shares of common stock, par value $0.0001 per share, and 5,000,000 shares of preferred stock, par value $0.0001 per share. Our board of directors may establish the rights, powers and preferences of undesignated preferred stock from time to time. Our board of directors is authorized, without stockholder approval, except as required by the listing standards of the New York Stock Exchange, to issue additional shares of our authorized capital stock.

Common Stock

Voting Rights

The holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Our amended and restated certificate of incorporation prohibits cumulative voting. Pursuant to our amended and restated bylaws, the election of directors shall be decided by a plurality vote of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. With respect to matters other than the election of directors, if a quorum is present, the affirmative vote of a majority of the shares represented and voting at a duly held meeting (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the stockholders, unless the vote of a greater number or a vote by classes is required by law, by our amended and restated certificate of incorporation or by our amended and restated bylaws. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Our amended and restated certificate of incorporation prohibits stockholders from taking action by written consent in lieu of a meeting.

Dividend Rights

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the board deems relevant.

Preemption, Conversion, and Redemption Rights

Holders of our common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption provisions applicable to the common stock. The outstanding shares of common stock are fully paid and non-assessable. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of our outstanding preferred stock and of any series of preferred stock that we may designate and/or issue in the future.

Board of Directors

The number of directors is fixed by, or in the manner provided in, our amended and restated certificate of incorporation and amended and restated bylaws. Commencing at the 2025 annual meeting of stockholders, all of our directors elected at an annual meeting of stockholders shall hold office for a term that expires at the next annual meeting of stockholders (or until their respective successors shall have been elected and qualified or until their earlier death, resignation or removal). The term of each director serving as of and immediately following the date of the 2024 annual meeting of stockholders shall expire at the 2025 annual meeting of stockholders, notwithstanding that such director may have been elected for a term that extended beyond the date of the 2025 annual meeting of stockholders.

Anti-Takeover Effects of Certain Provisions of Delaware Law

Provisions of Delaware law and of our amended and restated certificate of incorporation and amended and restated bylaws could make the acquisition of the company through a tender offer, a proxy contest or other means more difficult and could make the removal of incumbent officers and directors more difficult. These provisions can discourage inadequate takeover bids and encourage persons seeking to acquire control of the company to first negotiate with our board of directors. We believe that the benefits provided by our ability to negotiate with the proponent of an unsolicited proposal would outweigh the disadvantages of discouraging these proposals. We believe the negotiation of an unsolicited proposal could result in terms more favorable to our stockholders.

We are subject to Section 203 of the DGCL, which prohibits persons deemed to be "interested stockholders" from engaging in a "business combination" with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this law may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors. This summary of the provisions of Section 203 of the DGCL does not purport to be complete and is qualified in its entirety by reference to our amended and restated certificate of incorporation, our amended and restated bylaws, and the DGCL.

Anti-Takeover Provisions of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Certain provisions in our amended and restated certificate of incorporation and amended and restated bylaws summarized below could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous.

Preferred Stock

Under our amended and restated certificate of incorporation, the board of directors may issue, without further stockholder approval, shares of preferred stock in one or more series and may also set forth the voting powers, full or limited or none, of each such series of preferred stock, which the board could use to implement a stockholder rights plan (also known as a "poison pill"). The board of directors shall fix the designations, preferences and relative, participating, optional or other special rights of each such series of preferred stock and the qualifications, limitations or restrictions of such powers, designations, preferences or rights.

No Action by Written Consent

Under our amended and restated certificate of incorporation and amended and restated bylaws, stockholders of the company may not take action by written consent in lieu of a meeting.

Special Meetings of Stockholders

Under our amended and restated bylaws, special meetings of our stockholders may be called only by the board of directors, the chairman of the board, the chief executive officer, or the president of the company.

Advance Notice Requirements for Stockholders Proposals and Director Nominations

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Board of Directors and Vacancies

The authorized number of directors on the board of directors will be established from time to time by resolution of the board of directors. Vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director.

Amendment of Our Amended and Restated Bylaws

The board of directors is expressly authorized to make, alter or repeal our amended and restated bylaws. Our amended and restated bylaws provide that stockholders are permitted to amend the amended and restated bylaws only with the approval of the holders of sixty-six and two-thirds percent ($66^{2}/3\%$) of the voting power of outstanding capital stock entitled to vote at an election of directors.

Forum Selection Clause

Under the amended and restated certificate of incorporation and the amended and restated bylaws, unless the company consents in writing to the selection of an alternative forum, the sole and exclusive forum for making certain types of claims will be a state or federal court located within the State of Delaware. This provision applies to (i) any derivative action or proceeding brought on behalf of the company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the company to the company or its stockholders, (iii) any action asserting a claim against the company or any director or officer or other employee of the company arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation and the amended and restated bylaws, or (iv) any action asserting a claim against the company or any director or officer or other employee of the company governed by the internal affairs doctrine.

Transfer Agent and Registrar

Our transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Listing

Our common stock is listed on the New York Stock Exchange under the trading symbol "BYON."

Exhibit 10.18

TERM LOAN CREDIT AGREEMENT

Dated as of October 21, 2024 among

KIRKLAND'S STORES, INC.,

as the Lead Borrower For

The Borrowers Named Herein The Guarantors Named Herein

BEYOND, INC.
as Administrative Agent and Collateral Agent and

The Lenders Party Hereto

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS 1

1.01 Defined Terms 1
1.02 Other Interpretive Provisions 39
1.03 Accounting Terms 40
1.04 Rounding 41
1.05 Times of Day 41
1.06 [Reserved] 41
1.07 Divisions 41

ARTICLE II TERM LOANS 41

1.01 Term Loans 41
1.02 Loan Procedures 42
1.03 [Reserved] 44
1.04 [Reserved] 44
1.05 Prepayments 44
1.06 Repayment of Loans 45
1.07 [Reserved] 45
1.08 Interest 45
1.09 [Reserved]. 46
1.10 Computation of Interest and Fees 46
1.11 Evidence of Debt 46
1.12 Payments Generally; Agent's Clawback 47
1.13 Sharing of Payments by Lenders 48
1.14 [Reserved] 49
1.15 [Reserved] 49

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER 49

1.01 Taxes 49
1.02 Illegality 53
1.03 Inability to Determine Rates 54
1.04 Increased Costs; Reserves on Term SOFR Loans 56
1.05 Compensation for Losses 57
1.06 Mitigation Obligations; Replacement of Lenders 57
1.07 Survival 58
1.08 Designation of Lead Borrower as Borrowers' Agent 58

ARTICLE IV CONDITIONS PRECEDENT TO LOANS 58

1.01 Conditions of the Term Loans 58

ARTICLE V REPRESENTATIONS AND WARRANTIES 62

1.01 Existence, Qualification and Power 62
1.02 Authorization; No Contravention 62
1.03 Governmental Authorization; Other Consents 63
1.04 Binding Effect 63

1.05 Financial Statements; No Material Adverse Effect 63
1.06 Litigation 64
1.07 No Default 64
1.08 Ownership of Property; Liens 64
1.09 Environmental Compliance 65
1.10 Insurance 65
1.11 Taxes 66
1.12 ERISA Compliance 66
1.13 Subsidiaries; Equity Interests 67
1.14 Margin Regulations; Investment Company Act 67
1.15 Disclosure 67
1.16 Compliance with Laws 68
1.17 Intellectual Property; Licenses, Etc. 68
1.18 Labor Matters 68
1.19 Security Documents 68
1.20 Solvency 69
1.21 Deposit Accounts; Credit Card Arrangements 69
1.22 Brokers 70
1.23 Customer and Trade Relations 70
1.24 Material Contracts 70
1.25 Casualty. 70
1.26 EEA Financial Institution 70
1.27 Sanctions Concerns and Anti-Corruption Laws 70
1.28 Beneficial Ownership Certification 70

ARTICLE VI AFFIRMATIVE COVENANTS 70

1.01 Financial Statements 71
1.02 Certificates; Other Information 72
1.03 Notices 74
1.04 Payment of Obligations 75
1.05 Preservation of Existence, Etc. 75
1.06 Maintenance of Properties 76
1.07 Maintenance of Insurance 76
1.08 Compliance with Laws 77
1.09 Books and Records; Accountants 77
1.10 Inspection Rights 78
1.11 Additional Loan Parties 78
1.12 Cash Management 79
1.13 Information Regarding the Collateral 79
1.14 Physical Inventories 80
1.15 Environmental Laws 80
1.16 Further Assurances 81
1.17 Compliance with Terms of Leaseholds 81
1.18 Material Contracts 82
1.19 Post-Closing Obligations 82
1.20 Board Observer. 82
1.21 Delivery of Certain Collateral Documents. 82

ARTICLE VII NEGATIVE COVENANTS 83

1.01 Liens 83
1.02 Investments 83

1.03 Indebtedness; Disqualified Stock; Equity Issuances 83
1.04 Fundamental Changes 83
1.05 Dispositions 84
1.06 Restricted Payments 84
1.07 Prepayments of Indebtedness 85
1.08 Change in Nature of Business 85
1.09 Transactions with Affiliates 86
1.10 Burdensome Agreements 86
1.11 Use of Proceeds 86
1.12 Amendment of Material Documents 86
1.13 Fiscal Year 87
1.14 Deposit Accounts; Credit Card Processors 87
1.15 [Reserved] 87
1.16 Sanctions 87
1.17 Anti-Corruption Laws 87
1.18 Bank Product Obligations 87

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES 87

1.01 Events of Default 87
1.02 Remedies Upon Event of Default 90
1.03 Application of Funds 91

ARTICLE IX THE AGENT 92

1.01 Appointment and Authority 92
1.02 Rights as a Lender 92
1.03 Exculpatory Provisions 92
1.04 Reliance by Agent 93
1.05 Delegation of Duties 94
1.06 Resignation of Agent 94
1.07 Non-Reliance on Agent and Other Lenders 95
1.08 [Reserved] 95
1.09 Agent May File Proofs of Claim 95
1.10 Collateral and Guaranty Matters 96
1.11 Notice of Transfer 96
1.12 Reports and Financial Statements 96
1.13 Agency for Perfection 97
1.14 Indemnification of Agent 97
1.15 Relation among Lenders 98
1.16 Defaulting Lenders 98
1.17 Recovery of Erroneous Payments 99

ARTICLE X MISCELLANEOUS 99

1.01 Amendments, Etc. 99
1.02 Notices; Effectiveness; Electronic Communications 101
1.03 No Waiver; Cumulative Remedies 103
1.04 Expenses; Indemnity; Damage Waiver 103
1.05 Payments Set Aside. 104
1.06 Successors and Assigns 105
1.07 Treatment of Certain Information; Confidentiality 109
1.08 Right of Setoff. 109

1.09 Interest Rate Limitation 110
1.10 Counterparts; Integration; Effectiveness 110
1.11 Survival 110
1.12 Severability 111
1.13 Replacement of Lenders 111
1.14 Governing Law; Jurisdiction; Etc 112
1.15 Waiver of Jury Trial 113
1.16 No Advisory or Fiduciary Responsibility 113
1.17 USA PATRIOT Act Notice 114
1.18 Foreign Asset Control Regulations 114
1.19 Time of the Essence 115
1.20 Press Releases 115
1.21 Additional Waivers 115
1.22 No Strict Construction 117
1.23 Attachments 117
1.24 [Reserved] 117
1.25 Keepwell 117
1.26 Acknowledgement and Consent to Bail-In of an Affected Financial Institution 117
1.27 Acknowledgement Regarding Any Supported QFCs 118
1.28 Electronic Execution of Certain Other Documents 119

ARTICLE XI CONVERSION; EXCHANGE 119

1.01 Conversion 119
1.02 Exchange 120
1.03 Effect of Conversion on Conversion Amount 120

SCHEDULES

1.01 Borrowers
2.01 Commitments and Applicable Percentages
5.01 Loan Parties Organizational Information 5.08(b)(1) Owned Real Estate
5.08(b)(2) Leased Real Estate
5.10 Insurance
5.13 Subsidiaries; Other Equity Investments
5.18 Collective Bargaining Agreements 5.21(a) DDAs
5.21(b) Credit Card Arrangements
5.24 Material Contracts
6.02 Financial and Collateral Reporting
6.19 Post-Closing Obligations
7.01 Existing Liens
7.02 Existing Investments
7.03 Existing Indebtedness
10.02 Agent's Office; Certain Addresses for Notices

EXHIBITS

Form of

A Notice of Borrowing/Continuation/Conversion
B [Reserved]
C-1 Form of Non-Convertible Note C-2 Form of Convertible Note
D Compliance Certificate
E Assignment and Assumption
F [Reserved]
G-1 through G-4 Tax Exhibits

TERM LOAN CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT is entered into as of October 21, 2024, among **KIRKLAND'S STORES, INC.**, a Tennessee corporation (the "Lead Borrower"); the Persons named on Schedule 1.01 hereto (collectively with the Lead Borrower, the "Borrowers"); the Guarantors (as defined herein); each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"); and **BEYOND, INC.**, a Delaware corporation, as Administrative Agent and Collateral Agent (each as defined herein).

W I T N E S E T H:

WHEREAS, the Borrowers have requested that the Lenders make Term Loans on the Closing Date in the aggregate principal amount of $17,000,000, the proceeds of which shall be used by the Borrowers for purposes permitted under, and otherwise in accordance with and subject to the terms of, this Agreement.

NOW, **THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

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

"ABL Agent" means the "First Lien Agent" as defined in the ABL Intercreditor Agreement. As of the Closing Date, the ABL Agent is **Bank of America, N.A**.

"ABL Availability" means "Availability", as defined in the ABL Credit Agreement. "ABL Credit Agreement" means the "First Lien Agreement" as defined in the ABL Intercreditor Agreement.

"ABL Facility" means Indebtedness of the Loan Parties pursuant to the ABL Credit Agreement, and any Permitted Refinancing thereof, which is subject to the terms of the ABL Intercreditor Agreement.

"ABL Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Closing Date between the Agent, ABL Agent and the Loan Parties and each additional party thereto from time to time, as amended, restated, amended and restated or otherwise modified from time to time in accordance with the terms thereof and any replacement intercreditor agreement entered into in connection with any replacement of the ABL Credit Agreement reasonably acceptable to the Agent.

"ABL Lender" shall mean each financial institution from time to time party to the ABL Credit Agreement as a "Lender" (as defined thereunder).

"ABL Loan Cap" means "Loan Cap", as defined in the ABL Credit Agreement.

"ABL Loan Documents" means the "ABL Documents" as defined in the ABL Intercreditor Agreement.

"ABL Maturity Date" means the "Maturity Date" under and as defined in the ABL Credit Agreement.

"ABL Obligations" means "Obligations" as defined in the ABL Credit Agreement, as in effect on the Closing Date.

"ABL Priority Collateral" has the meaning set forth in the ABL Intercreditor Agreement. "Accommodation Payment" as defined in Section 10.21(d).

"Acquisition" means, with respect to any Person (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Store locations of any Person, in each case in any transaction or group of transactions which are part of a common plan.

"Act" shall have the meaning provided in Section 10.17.

"Additional Shares" means the shares of Parent Common Stock that are issued to Beyond pursuant to the terms of the Subscription Agreement that are not Conversion Shares.

"Additional Shares Shortfall" means (i) the amount (if any) by which the Maximum Additional Shares exceeds the number of Additional Shares that are actually issued to Beyond pursuant to the terms of the Subscription Agreement, (ii) *multiplied* by the Conversion Price.

"Adjustment Date" means the first day of each Fiscal Quarter, commencing February 2, 2025.

"Administrative Agent" means Beyond, Inc., in its capacity as administrative agent under any of the Loan Documents, or any successor thereto.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent or such other form reasonably acceptable to the Agent.

"Affected Financial Institution" means any EEA Financial Institution or UK Financial Institution.

"Affiliate" means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (ii) any director, officer, managing member, partner, trustee, or beneficiary

of that Person, (iii) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (iv) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person. Notwithstanding the foregoing, neither the Agent nor any of its Affiliates (other than the Lead Borrower and its Subsidiaries) shall constitute "Affiliates" hereunder.

"Agent" means Beyond, Inc., in its capacity as Administrative Agent and Collateral Agent, or any successor thereto.

"Agent Parties" shall have the meaning specified in Section 10.02(c).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Agreement" means this Term Loan Credit Agreement, as amended, modified, waived, supplemented or restated from time to time.

"Allocable Amount" has the meaning specified in Section 10.21(d).

"Applicable Lenders" means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" means the percentages set forth in the pricing grid below:

Term SOFR Margin	**Base Rate Margin**
2.75%	1.75%

Upon the later of (x) the first anniversary of the Closing Date and (y) demonstration by the Loan Parties that the Consolidated Fixed Charge Coverage Ratio, as calculated for the most recent Measurement Period, is greater than 1.0:1.0, the Applicable Margin shall be reduced, on a one- time basis and continuing until the Termination Date, by 0.50% for the Term SOFR Margin and Base Rate Margin set forth above, as applicable (for the avoidance of doubt, such reduction shall be reflected upon the immediately succeeding Adjustment Date).

"Applicable Percentage" means, with respect to any Lender at any time, (a) with respect to such Lender's Non-Convertible Term Loan Increase Commitment, the percentage (carried out to the ninth decimal place) of the aggregate Non-Convertible Term Loan Increase Commitments represented by such Lender's Non-Convertible Term Loan Increase Commitment; provided, that if the Non-Convertible Term Loan Increase Commitment of each Lender has been terminated pursuant to Section 8.02 or if the Non-Convertible Term Loan Increase Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments, and (b) with respect to such Lender's portion of the outstanding Term Loans, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Term Loans held by such Lender at such time. The initial Applicable Percentage of each Lender is set

forth opposite the name of such Lender on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

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

"Audited Financial Statements" means the audited consolidated balance sheet of the Parent and its Subsidiaries for the fiscal year ended February 3, 2024, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such fiscal year of the Parent and its Subsidiaries, including the notes thereto.

"Automatic Conversion" has the meaning set forth in Section 11.01(a).

"Automatic Conversion Cap" means in connection with any issuance of Parent Common Stock, a number of shares not exceeding 40% of the aggregate outstanding Parent Common Stock (after giving effect to such issuance).

"Automatic Conversion Shares" has the meaning set forth in Section 11.01(a).

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

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

"Bankruptcy Code" means the federal Bankruptcy Code of the United States, Title 11 of the United States Code, as amended from time to time.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by **Bank of America** as its "prime rate," and (c) Term SOFR plus 1.00%. The "prime rate" is a rate set by **Bank of America** based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by **Bank of America** shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Basel III" means the set of reform measures designed to improve the regulation, supervision and risk management within the banking sector, as developed by the Basel Committee on Banking Supervision.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230. "Beyond" means Beyond, Inc., a Delaware corporation.

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Blocked Account" has the meaning provided in Section 6.12(a).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent (it being agreed that, prior to the payment in full of the ABL Obligations, the form agreed to by the ABL Agent shall be deemed to be reasonably acceptable to the Agent so long as such agreement provides for the same rights in favor of the Collateral Agent as provided to the ABL Agent, subject to the ABL Intercreditor Agreement), establishing control (as defined in the UCC) of such account by the ABL Agent and the Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the ABL Agent or the Agent, as the case may be, without the further consent of any Loan Party.

"Blocked Account Bank" means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Board" shall have the meaning specified in Section 6.20.

"Board Observer" shall have the meaning specified in Section 6.20. "Borrower Materials" has the meaning specified in Section 6.02. "Borrowers" has the meaning specified in the introductory paragraph hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent's Office is located.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) (x) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, minus (y) tenant allowances received in cash during such period from landlords for operating lease agreements for new Stores, and (b) Capital Lease Obligations incurred by a Person during such period.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Dominion Event" means the occurrence and continuance of any Event of Default. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing so long as such Event of Default has not been waived. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

"Cash Flow Forecast" shall have the meaning given such term in Section 6.02(l). "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in

any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), in each case other than Beyond and its Affiliates, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right), provided, however, that the subscription for and issuance of shares of Parent Common Stock pursuant to the Subscription Agreement shall not be a Change of Control; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals
(i) who were members of that board or equivalent governing body on the first day of such period,
(ii) whose election or nomination to that board or equivalent governing body was approved by (x) individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (y) Beyond or any of its Affiliates, or (iii) whose election or nomination to that board or other equivalent governing body was approved by (x) individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (y) Beyond or any of its Affiliates; or

(c) any Person (other than Beyond and its Affiliates) or two or more Persons (other than Beyond and its Affiliates) acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, control over the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities; or

(d) any "change in control" or "sale" or "disposition" or similar event as defined in any Organizational Document of any Loan Party, the ABL Credit Agreement or any document governing Material Indebtedness of any Loan Party; or

(e) the Parent fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party free and clear of all Liens (other than the Liens in favor of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents.

"Closing Date" means October 21, 2024.

"Closing Date Non-Convertible Term Loan Commitment" means the Commitment of each applicable Lender to fund the Closing Date Non-Convertible Term Loans on the Closing Date pursuant to Section 2.01(a).

"Closing Date Non-Convertible Term Loans" means the Term Loans that are funded on the Closing Date in accordance with Section 2.01(a).

"CME" means CME Group Benchmark Administration Limited.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect from time to time.

"Collaboration Agreement" means that certain Collaboration Agreement dated as of the Closing Date by and among Parent and Beyond (as amended, restated, supplemented or otherwise modified in writing from time to time), which such agreement documents the Operating Arrangements, together with all exhibits and attachments thereto.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent (it being agreed that, prior to the payment in full of the ABL Obligations, the form agreed to by the ABL Agent shall be deemed to be reasonably acceptable to the Agent so long as such agreement provides for the same rights in favor of the Collateral Agent as provided to the ABL Agent, subject to the ABL Intercreditor Agreement), executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Collateral Agent" means Beyond, Inc., acting in such capacity under any of the Loan Documents for its own benefit and the ratable benefit of the other Credit Parties, or any successor thereto.

"Commitment" means, as to each Lender, its Term Loan Commitment.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.). "Compliance Certificate" means a certificate substantially in the form of Exhibit D. "Communication" has the meaning set forth in Section 10.28.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate", "SOFR", "Term SOFR" and "Interest Period", timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consent" means actual consent given by a Lender from whom such consent is sought. "Consolidated" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Parent and its Subsidiaries for the most recently completed Measurement Period, plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income Taxes, (iii) depreciation and amortization expense, (iv) stock compensation charges which do not represent a cash item in such period or any future period, and (v) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Parent and its Subsidiaries for such Measurement Period), minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income (in each case of or by the Parent and its Subsidiaries for such Measurement Period), all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA for such period minus (ii) unfinanced Capital Expenditures made during such period, minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash during such period (but not less than zero) to (b) (i) Debt Service Charges for such period plus (ii) all Restricted Payments made pursuant to Section 7.06(c) during such period, in each case, of or by the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Interest Charges" means, for any Measurement Period, an amount equal to
(a) the sum of (x) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs, and (y) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP, minus (b) interest income during such period (excluding any portion of interest income representing accruals of amounts received in a previous period), in each case of or by the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, as of any date of determination, the net income of the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP, provided, however, that there shall be excluded
(a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the income (or loss) of any Subsidiary during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to any of the Parent or its Subsidiaries during such period, (c) the income (or loss) of a Subsidiary during such Measurement Period and accrued prior to the date it becomes a Subsidiary of the Parent and its Subsidiaries or is merged into or consolidated with the Parent or any of its Subsidiaries or such Person's assets are acquired by the Parent or any of its Subsidiaries, and
(d) the income of any direct or indirect Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, except that the Parent's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income.

"Contractual Obligation" means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Conversion" shall mean, collectively, the Automatic Conversion and the Elective Conversion.

"Conversion Date" shall have the meaning specified in Section 11.01(a). "Conversion Period" shall have the meaning specified in Section 11.01(a). "Conversion Price" means $1.85.

"Conversion Shares" shall mean, collectively, the Automatic Conversion Shares and the Elective Conversion Shares.

"Convertible Notes" means the notes evidencing the Convertible Term Loans issued to the Lenders requesting such notes, in each instance in the form of Exhibit C-2 (or such other form reasonably acceptable to the Agent and Lead Borrower).

"Convertible Term Loans" means the Term Loans that are funded on the Closing Date in accordance with Section 2.01(b) and are subject to Conversion in accordance with Section 11.01.

"Convertible Term Loan Commitments" means the Commitment of each applicable Lender to make Convertible Term Loans to the Borrowers on the Closing Date pursuant to Section 2.01(b) of this Agreement in an amount equal to the amount set forth opposite the name of such Lender on the applicable portion of Schedule 2.01 attached hereto.

"Convertible Term Loan Maturity Date" means, with respect to the Convertible Term Loans, the date that is one-hundred eighty (180) days after the Closing Date; provided that, if prior to any such date the Exchange occurs, the "Convertible Term Loan Maturity Date" shall be the Non-Convertible Term Loan Maturity Date.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified in Section 10.27.

"Credit Card Issuer" shall mean any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation,

credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates,
(ii) the Administrative Agent and the Collateral Agent, (iii) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (iv) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (v) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means (a) all reasonable out-of-pocket expenses incurred by the Agent, and its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examiners, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral or in connection with any proceeding under any Debtor Relief Laws, or
(D) any workout, restructuring or negotiations in respect of any Obligations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent or any of its Affiliates, after the occurrence and during the continuance of an Event of Default, provided, that such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

"Daily Simple SOFR" with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source satisfactory to Agent).

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"Debt Service Charges" means for any Measurement Period, the sum of (a) Consolidated Interest Charges paid or required to be paid for such Measurement Period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Consolidated basis in accordance with GAAP.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, and (b) with respect to all other Obligations, an interest rate equal to the Base Rate, plus the then Applicable Margin, plus two percent (2%) per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 9.16(b), any Lender that (a) has failed to
(i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Lead Borrower or the in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a

Defaulting Lender (subject to Section 9.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Lead Borrower and each other Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division." "Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Lead Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"Dollars" and "$" mean lawful money of the United States.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority,
(b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Elective Conversion" has the meaning set forth in Section 11.01(a).

"Elective Conversion Cap" means, in connection with any issuance of Parent Common Stock, a number of shares not exceeding 2,609,215 shares of Parent Common Stock.

"Elective Conversion Shares" has the meaning set forth in Section 11.01(a). "Electronic Copy" has the meaning set forth in Section 10.28.

"Eligible Assignee" means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by (i) the Agent, and (ii) unless an Event of Default has occurred and is continuing, the Lead Borrower (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials,
(c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the UCC.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Exchange" shall have the meaning given such term in Section 11.02.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party under the Facility Guaranty of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 10.25 hereof and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such guaranty or security interest becomes illegal.

"Excluded Taxes" means, any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes,
(b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Lead Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Executive Order" has the meaning set forth in Section 10.18.

"Existing Credit Agreement" means that certain Term Loan Credit Agreement dated as of January 25, 2024 by and among the Lead Borrower, the other Borrowers (as defined therein) party thereto, the Guarantors (as defined therein) party thereto, 1903P Loan Agent, LLC as the Agent (as defined therein) and the Lenders party thereto.

"Facility Guaranty" means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that if the Federal Funds Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Agreement.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday closest to the end of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Saturday closest to the end of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Year" means any 52 week period or 53 week period ending on the Saturday closest to January 31 of any calendar year.

"Floor" means 0.00% per annum.

"Foreign Asset Control Regulations" has the meaning set forth in Section 10.18. "Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other

than that in which the Lead Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect

thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means the Parent and each Subsidiary of the Parent or any Borrower (other than the Borrowers) existing on the Closing Date and each other Subsidiary of the Parent or any Borrower that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) All Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b). "Information" has the meaning specified in Section 10.07.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Interest Payment Date" means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that if any Interest Period for a Term SOFR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and
(b) as to any Base Rate Loan, the first Business Day following each month and the Maturity Date.

"Interest Period" means as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, as selected by the Lead Borrower in its Notice of Borrowing/Continuation/Conversion (in each case, subject to availability); provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period pertaining to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Parent's and/or its Subsidiaries' internal controls over financial reporting, in each case as described in the Securities Laws.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Investor Documents" means (i) the Collaboration Agreement, (ii) the Investor Rights Agreement, (iii) the License Agreement and (iv) the Subscription Agreement.

"Investor Rights Agreement" means that certain Investor Rights Agreement, dated as of the Closing Date, by and between Beyond and Parent (as amended, restated, supplemented or otherwise modified in writing from time to time).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"Joinder Agreement" means an agreement, in form satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental

Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrower and the Agent.

"License Agreement" means that certain Trademark License Agreement, dated as of the Closing Date, by and between Beyond and Parent (as amended, restated, supplemented or otherwise modified in writing from time to time).

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" means any Term Loan or other extension of credit made by a Lender or the Agent under this Agreement.

"Loan Account" has the meaning assigned to such term in Section 2.11.

"Loan Documents" means this Agreement, each Note, the Security Documents, the Facility Guaranty, the Blocked Account Agreements, the ABL Intercreditor Agreement and any other instrument or agreement now or hereafter executed and delivered in connection herewith, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time.

"Loan Parties" means, collectively, the Borrowers and the Guarantors.

"Master Agreement" has the meaning provided for in the definition of "Swap Contract". "Material Adverse Effect" means (a) a material adverse change in, or a material adverse

effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party or the Parent and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies

of the Agent or the Credit Parties under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

"Material Contract" means, with respect to any Person, (i) the Investor Documents and (ii) each contract to which such Person is a party involving aggregate consideration payable to or by such Person of $500,000 or more in any Fiscal Year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

"Material Indebtedness" means (i) Indebtedness in respect of ABL Facility, and (ii) other Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding $500,000. For purposes of determining the amount of Material Indebtedness at any time,
(a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

"Maturity Date" means (i) with respect to the Non-Convertible Term Loans, the Non- Convertible Term Loan Maturity Date and (ii) with respect to the Convertible Term Loans, the Convertible Term Loan Maturity Date.

"Maximum Additional Shares" means 4,324,324 shares of Common Stock (as defined in the Subscription Agreement).

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Measurement Period" means, at any date of determination, the most recently completed twelve Fiscal Months of the Parent.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto. "Multiemployer Plan" means any employee benefit plan of the type described in

Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Lead Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Non-Convertible Notes" means the notes evidencing the Non-Convertible Term Loans issued to the Lenders requesting such notes, in each instance in the form of Exhibit C-1 (or such other form reasonably acceptable to the Agent).

"Non-Convertible Exchange Term Loans" means the Term Loans deemed to be funded in connection with the Exchange.

"Non-Convertible Increase Term Loans" means any Term Loans extended in satisfaction of the Non-Convertible Term Loan Increase Commitments pursuant to Section 2.01(c).

"Non-Convertible Term Loan Commitments" means, collectively, (i) the Closing Date Non-Convertible Term Loan Commitments and (ii) Non-Convertible Term Loan Increase Commitments, in each case in an amount equal to the amount set forth opposite the name of such Lender on the applicable portion of Schedule 2.01 attached hereto.

"Non-Convertible Term Loan Increase" has the meaning specified in Section 2.01(c). "Non-Convertible Term Loan Increase Commitments" means the Commitment of each applicable Lender to participate in the Non-Convertible Term Loan Increase pursuant to Section 2.01(c) of this Agreement.

"Non-Convertible Term Loans" means, collectively, (i) the Closing Date Non-Convertible Term Loans, (ii) the Non-Convertible Increase Term Loans and (iii) the Non-Convertible Exchange Term Loans.

"Non-Convertible Term Loan Maturity Date" means September 30, 2028.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Notes" means, collectively, the Non-Convertible Notes and the Convertible Notes. "Notice of Borrowing/Continuation/Conversion" means the request by the Lead Borrower for a borrowing of Term Loans on the Closing Date or continuation or conversion of the applicable Interest Period thereafter in accordance with Section 2.02 and substantially in the form attached hereto as Exhibit A.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or under the Collaboration Agreement or the License Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees costs, expenses and indemnities are allowed claims in such proceeding, provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Operating Arrangements" shall have the meaning given such term in the Collaboration Agreement.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

"Osmium Shareholder Voting Agreement" means that certain Letter Agreement, dated as of October 18, 2024, executed by Osmium Partners, LLC.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

"Parent" means Kirkland's, Inc., a Tennessee corporation.

"Parent Common Stock" has the meaning specified in Section 11.01(a). "Participant" has the meaning specified in Section 10.06(d).

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Default or Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, and (b) after giving pro forma effect to such transaction or payment, either (x) (i) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than the greater of (A) 20% of the ABL Loan Cap and (B) $15,000,000, and (ii) the Consolidated Fixed Charge Coverage Ratio, on a pro-forma basis

for the twelve months immediately preceding such transaction or payment, will be equal to or greater than 1.0:1.0, or (y) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than 30% of the ABL Loan Cap; provided, that notwithstanding anything to the contrary contained herein, prior to the eighteen (18) month anniversary of the Closing Date, the Loan Parties shall not be permitted to undertake any specified transaction or payment which requires the satisfaction of the Payment Conditions. Prior to undertaking any transaction or payment which is subject to the Payment Conditions, the Loan Parties shall deliver to the Agent evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

"PBGC" means the Pension Benefit Guaranty Corporation. "PCAOB" means the Public Company Accounting Oversight Board. "Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Lead Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(b) The Lead Borrower shall have furnished the Agent with thirty (30) days' prior written notice of such intended Acquisition and shall have furnished the Agent with a current draft of the Acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Loan Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and such other information as the Agent may reasonably require, all of which shall be reasonably satisfactory to the Agent;

(c) Either (i) the legal structure of the Acquisition shall be acceptable to the Agent in its discretion, or (ii) the Loan Parties shall have provided the Agent with a favorable solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Agent;

(d) After giving effect to the Acquisition, if the Acquisition is an Acquisition of Equity Interests, a Loan Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(e) Any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement;

(f) If the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an Acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a "Borrower" hereunder or as a Guarantor, as the Agent shall determine, and the Agent shall have received a perfected security interest in such Subsidiary's Equity Interests and property of such Subsidiary and of the same nature as constitutes Collateral under the Security Documents with the priority of such security interest determined in accordance with the ABL Intercreditor Agreement; and

(g) The Loan Parties shall have satisfied the Payment Conditions. "Permitted Disposition" means any of the following:

(a) dispositions of Inventory in the ordinary course of business;

(b) bulk sales or other dispositions of the Inventory of a Loan Party not in the ordinary course of business in connection with Permitted Store Closings, at arm's length;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided, that if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;

(e) dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary so long as such dispositions do not involve Equipment having an aggregate fair market value in excess of $500,000 for all such Equipment disposed of by the Loan Parties in any Fiscal Year;

(f) Sales, transfers and dispositions (i) among the Loan Parties or (ii) by any Subsidiary to a Loan Party, in the case of this clause (ii), for no more than fair market value;

(g) Sales, transfers and dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(h) as long as no Default or Event of Default then exists or would arise therefrom, sales of Real Estate of any Loan Party (or sales of any Person or Persons created to hold such Real Estate or the Equity Interests in such Person or Persons), including sale-leaseback transactions involving any such Real Estate pursuant to leases on market terms, as long as, (A) such sale is made for fair market value, and (B) in the case of any sale-leaseback transaction permitted hereunder, the Agent shall have received from each such purchaser or transferee a Collateral Access Agreement on terms and conditions reasonably satisfactory to the Agent.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.04;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment and other types of insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

(d) Deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default
hereunder;

(f) Easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the Closing Date and listed on Schedule 7.01 and any Permitted Refinancings thereof;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition,
(ii) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (iii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent arising under or pursuant to the Loan Documents;

(j) Landlords' and lessors' Liens in respect of rent not in default;

(k) Possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided, that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent not prohibited under the Loan Documents, the consignment of goods to a Loan Party;

(n) voluntary Liens on property in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(p) [reserved]; and

(q) Liens in favor of the ABL Agent securing the ABL Obligations, so long as such Liens are at all times subject to the ABL Intercreditor Agreement.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

(a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) Purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by

a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof, provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed $2,500,000 at any time outstanding and further provided, that if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into an access and use agreement on terms reasonably satisfactory to the Agent;

(d) If the Agent has consented in its sole discretion to such Indebtedness, Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided, for the avoidance of doubt, this clause (d) shall not prohibit the construction or acquisition or improvement of any Real Estate owned by any Loan Party to the extent the Borrower does not incur any Indebtedness in connection therewith, provided further, that the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(e) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(f) obligations (contingent or otherwise) of any Loan Party or any Subsidiary thereof existing or arising under any Swap Contract, provided, that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided, that such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, has a final maturity which extends beyond the Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of a Loan Party);

(i) The Obligations;

(j) Unsecured Subordinated Indebtedness in an aggregate amount not exceeding $10,000,000 at any time;

(k) [reserved]; and

(l) Indebtedness of the Loan Parties evidenced by the ABL Facility in an aggregate principal amount not to exceed the ABL Principal Cap (as defined in the ABL Intercreditor Agreement) at any time outstanding, so long as such Indebtedness shall at all times be subject to the ABL Intercreditor Agreement.

"Permitted Investments" means each of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that, the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is an ABL Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System,
(ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date, (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties (other than the Parent), and (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) Guarantees constituting Permitted Indebtedness;

(j) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments by any Loan Party in Swap Contracts permitted hereunder;

(k) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(l) advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business (i) in an aggregate amount not to exceed $250,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes, and
(ii) in an aggregate amount not to exceed $1,000,000 at any time outstanding to permit such officers, directors and employees to purchase Equity Interests in a Loan Party so long as no Default or Event of Default shall have occurred and be continuing;

(m) Investments constituting Permitted Acquisitions; and

(n) Capital contributions made by any Loan Party to another Loan Party;

provided, however, that notwithstanding the foregoing, (i) after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) through (e) shall be permitted unless either (A) no Loans or, if then required to be Cash Collateralized (as defined in the ABL Credit Agreement), Letters of Credit (as defined in the ABL Credit Agreement) are then outstanding under the ABL Credit Agreement, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a Term SOFR Loan, the proceeds of which Investment will be applied to the ABL Obligations after the expiration of such Interest Period (capitalized terms used in the foregoing clauses (A) and (B) having the respective meanings ascribed to such terms in the ABL Credit Agreement as in effect on the Closing Date), and (ii) such Investments shall be pledged to the ABL Agent and the Agent as additional collateral for the obligations under the ABL Facility and the Obligations, respectively, pursuant to such agreements as may be reasonably required by the Agent and the ABL Agent.

"Permitted Refinancing" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced,

(c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

"Permitted Store Closings" means (a) Store closures and related disposition of Inventory, which do not exceed in any Fiscal Year of the Parent and its Subsidiaries, fifteen percent (15%) of the number of the Loan Parties' Stores as of the beginning of such Fiscal Year (net of Store relocations and openings for such Fiscal Year), and (b) the related Inventory is either moved to a distribution center or another retail location of the Loan Parties for future sale in the ordinary course of business or is disposed of, if requested by the Agent, in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agent.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Lead Borrower or any ERISA Affiliate or any such Plan to which the Lead Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 6.02.

"Prepayment Event" means the incurrence by a Loan Party of any Indebtedness other than Permitted Indebtedness.

"Public Lender" has the meaning specified in Section 6.02.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 10.27.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

"Register" has the meaning specified in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of the Parent and its Subsidiaries as prescribed by the Securities Laws.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Reports" has the meaning provided in Section 9.12(b).

"Required Lenders" means, as of any date of determination, those Lender(s) holding more than 50% of the sum of the unused aggregate Commitments and aggregate principal balance of the Loans.

"Rescindable Amount" has the meaning provided in Section 2.12(c).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, any vice president, secretary or assistant secretary, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect

to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"RP Conditions" means, at the time of determination with respect to any applicable Restricted Payment, that (a) no Default or Event of Default then exists or would arise as a result of the making of such Restricted Payment, and (b) after giving pro forma effect to such Restricted Payment, either (x) (i) ABL Availability for each day during the prior sixty (60) day period was be equal to or greater than the greater of (A) 20% of the ABL Loan Cap and (B) $15,000,000, and
(ii) the Consolidated Fixed Charge Coverage Ratio, on a pro forma basis for the twelve months immediately preceding such transaction or payment, will be equal to or greater than 1.1:1.0, or (y) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than 30% of the ABL Loan Cap. Prior to undertaking any Restricted Payment which is subject to the RP Conditions, the Loan Parties shall deliver to the Agent evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

"Sanction(s)" means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty's Treasury ("HMT") or other relevant sanctions authority.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the Security Agreement dated as of the Closing Date, among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"Security Documents" means the Security Agreement, the Blocked Account Agreements and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Shareholder Approval" means the approval during the Conversion Period of the holders of a majority of the common stock of the Parent, at a meeting duly called for such purpose, for Parent to issue the Additional Shares pursuant to the terms of the Subscription Agreement as required under the listing standards of Nasdaq, including Nasdaq Listing Rule 5635(b) and (d).

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Parent and its Subsidiaries as of that date determined in accordance with GAAP.

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

"SOFR Adjustment" means 0.10% (10.00 basis points) per annum.

"Solvent" and "Solvency" means, with respect to any Person on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.25).

"Store" means any retail store (which may include any real property, fixtures, equipment, Inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

"Subscription Agreement" means that certain Subscription Agreement dated as of the Closing Date by and between Parent and Beyond.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(b). "Supported QFC" has the meaning specified in Section 10.27.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligations" means with respect to any Loan Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loans" means, collectively, the Convertible Term Loans and the Non-Convertible Term Loans.

"Term Loan Commitments" means, collectively, the Convertible Term Loan Commitments and the Non-Convertible Term Loan Commitments.

"Term SOFR" means, for any calculation with respect to a Loan on any day, the Term SOFR Reference Rate with a tenor equal to the applicable Interest Period (such day, the "Term

SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of each calendar month as such rate is published by the Term SOFR Administrator; provided, that, (i) if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Term SOFR Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day and (ii) if Term SOFR determined as provided above (including pursuant to clause (i) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

"Term SOFR Loan" means a Loan that bears interest at a rate based on Term SOFR. "Term SOFR Reference Rate" means the forward-looking term rate based on SOFR. "Term SOFR Replacement Date" has the meaning specified in Section 3.03(b).

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

"Termination Date" means the earliest to occur of (i) the applicable Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the date on which all outstanding Obligations (other than unasserted contingent indemnification Obligations) have been paid in full and Commitments are irrevocably terminated in accordance with the applicable provisions of Section 8.02.

"Trading with the Enemy Act" has the meaning set forth in Section 10.18.

"Type" means, with respect to a Committed Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral

or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

"UFCA" has the meaning specified in Section 10.21(d). "UFTA" has the meaning specified in Section 10.21(d).

"UK Financial Institution" means any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"United States" and "U.S." mean the United States of America.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.27.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III). "Write-Down and Conversion Powers" means, (a) the write-down and conversion powers

of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule or (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds of all of the Obligations other than unasserted contingent indemnification Obligations.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the

Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 [Reserved].

1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II TERM LOANS

1.01 Term Loans.

(a) Subject to the terms and conditions set forth herein, each Lender with a Closing Date Non-Convertible Term Loan Commitment severally agrees to make Closing Date Non-Convertible Term Loans to the Borrowers on the Closing Date, in an amount equal to such Lender's Closing Date Non-Convertible Term Loan Commitment. The Borrowers shall request the funding of the Closing Date Non-Convertible Term Loans pursuant to the procedures set forth in Section 2.02(b). Each Lender's Closing Date Non-Convertible Term Loan Commitment shall automatically be terminated upon the funding of such Lender's Closing Date Non-Convertible Term Loans on the Closing Date. The principal amount of any Closing Date Non-Convertible Term Loan which is repaid or prepaid cannot be reborrowed.

(b) Subject to the terms and conditions set forth herein, each Lender with a Convertible Term Loan Commitment severally agrees to make Convertible Term Loans to the Borrowers on the Closing Date, in an amount equal to such Lender's Convertible Term Loan Commitment. The Borrowers shall request the funding of the Convertible Term Loans pursuant to the procedures set forth in Section 2.02(b). Each Lender's Convertible Term Loan Commitment

shall automatically be terminated upon the funding of such Lender's Convertible Term Loan on the Closing Date. The principal amount of any Convertible Term Loan which is repaid or prepaid cannot be reborrowed.

(c) Subject to the terms and conditions set forth herein, if Shareholder Approval is obtained prior to the date that is 180 days after the Closing Date and there is an Additional Shares Shortfall, then each Lender with a Non-Convertible Term Loan Increase Commitment severally agrees to make Non-Convertible Increase Term Loans to the Borrowers (the "Non- Convertible Term Loan Increase") in an amount equal to such Lender's pro rata percentage of the Non-Convertible Term Loan Increase Commitment. Each Lender's Non-Convertible Term Loan Increase Commitment shall automatically be terminated upon the earlier of (i) funding of such Lender's Non-Convertible Increase Term Loans on the applicable date and (ii) the date that is 180 days after the Closing Date. The principal amount of any Non-Convertible Increase Term Loans which is repaid or prepaid cannot be reborrowed.

1.02 Loan Procedures.

(a) [Reserved].

(b) Request for Term Loans. Lead Borrower shall give irrevocable written notice to the Agent of the borrowing of the Closing Date Non-Convertible Term Loans and the Convertible Term Loans by delivery of a Notice of Borrowing/Continuation/Conversion, appropriately completed by a Responsible Officer of the Lead Borrower no later than 11:00 a.m. five (5) Business Days prior to the Closing Date (or such later date as agreed by the Agent in its discretion). The Notice of Borrowing/Continuation/Conversion shall specify the proposed Closing Date. All Term Loans shall be Term SOFR Loans unless the provisions of Sections 3.02 and 3.03 shall apply. The Agent shall advise each Lender of the details and amount of any Term Loan to be made by it as a part of the requested borrowing following receipt of a Notice of Borrowing/Continuation/Conversion in accordance with this Section. Each Lender shall make the amount of its Term Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Notice of Borrowing/Continuation/Conversion. Upon satisfaction of the applicable conditions, Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(c) [Reserved].

(d) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document as a Loan hereunder and may charge the same to the Loan Account notwithstanding that the outstanding Obligations may exceed the total Commitments after giving effect to such charge. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal

balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(e) Conversions and Continuations.

(i) Each conversion of Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Lead Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(e)(i) must be confirmed promptly by delivery to the Agent of a written Notice of Borrowing/Continuation/Conversion, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each conversion to or continuation of Term SOFR Loans shall be in the full of amount of the applicable Term SOFR Loan. Each conversion to Base Rate Loans shall be in such minimum amounts as the Agent may require. Each Notice of Borrowing/Continuation/Conversion (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Term SOFR Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify a Type of Loan in a Notice of Borrowing/Continuation/Conversion or if the Lead Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Lead Borrower requests a conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(ii) If no timely notice of a conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(e)(i).

(iii) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as Term SOFR Loans without the Consent of the Required Lenders.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) Each determination of an interest rate by the Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(j) The Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to (i) the rates in the definition of "Term SOFR" or any other reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternate, replacement or successor to such rate (including any Successor Rate), or any component thereof, or the effect of any of the foregoing, or of any Conforming Changes. Agent may select information source(s) in its discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate), or any component thereof, in each case pursuant to the terms hereof, and shall have no liability to any Lender, Loan Party or other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise, and whether at law or in equity) for any error or other act or omission related to or affecting the selection, determination or calculation of any rate (or component thereof) provided by such information source(s).

(k) [Reserved].

1.03 [Reserved].

1.04 [Reserved].

1.05 Prepayments.

(a) Voluntary Prepayment.

(i) The Borrowers may, upon irrevocable written notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Term Loans hereunder. Any prepayment pursuant to this Section 2.05(a) shall be in a minimum amount of $1,000,000 and increments of $1,000,000 in excess of such amount or, if less, the entire amount of the applicable Term Loan so prepaid. Notice of prepayment must be received by the Agent not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Term Loans of the Lenders prepaid in accordance with their respective Applicable Percentages. Amounts prepaid on account of Term Loans may not be reborrowed. Any voluntary prepayments hereunder shall be applied *pro rata* to the Convertible Term Loans and the Non-Convertible Term Loans.

(ii) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) Mandatory Prepayments

(i) With respect to any Prepayment Event specified in clause (i) thereof, irrespective of whether a Cash Dominion Event then exists and is continuing, the Borrowers shall prepay the Loans in their entirety on the date of such Prepayment Event.

(ii) With respect to any Prepayment Event specified in clause (ii) thereof, irrespective of whether a Cash Dominion Event then exists and is continuing, the Borrowers shall prepay the Loans in an amount equal to the amount of such incurred indebtedness that is not Permitted Indebtedness on the date of such Prepayment Event.

(f) Prepayments made pursuant to Section 2.05(a) and (e) above, shall be applied ratably to the Term Loans then outstanding.

1.06 Repayment of Loans. The Borrowers hereby unconditionally promise to pay (i) to the Agent for the account of each Lender who has advanced a Convertible Term Loan, the original principal amount of the Convertible Term Loans and all accrued interest thereon on the Convertible Term Loan Maturity Date and (ii) to the Agent for the account of each Lender who has advanced a Non-Convertible Term Loan, the original principal amount of the Non-Convertible Term Loans and all accrued interest thereon on the Non-Convertible Term Loan Maturity Date.

1.07 [Reserved].

1.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) the outstanding principal amount of each Term SOFR Loan for each Interest Period shall bear interest at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Margin for Term SOFR Loans and (ii) the outstanding principal amount of each Base Rate Loan shall bear interest at a rate per annum equal to the applicable Base Rate plus the Applicable Margin for Base Rate Loans.

(b) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(i) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by Law.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Except as provided in Section 2.08(b)(ii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) The Agent may make Conforming Changes from time to time with respect to SOFR, Term SOFR or any Successor Rate. Notwithstanding anything to the contrary in any Loan Document, any amendment implementing such changes shall be effective without further action or consent of any party to any Loan Document. Agent shall post or provide each such amendment to the Lenders and Lead Borrower reasonably promptly after it becomes effective.

1.09 [Reserved].

1.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid in accordance with Section 2.12(a) below, provided, that any Loan that is repaid on the same day on which it is made shall, bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

1.11 Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

1.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of any Loan that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Loan available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and
(B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Loan to the Agent, then the amount so paid shall constitute such Lender's Term Loan included in such borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(c) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. With respect to any payment that the Agent makes for the account of the Lenders hereunder as to which the Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to

repay to the Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) [Reserved].

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Loan or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan(s) or to make its payment hereunder.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

1.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Credit Party receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the applicable Loans of the other applicable Lenders or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided, that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such

participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

1.14 [Reserved].

1.15 [Reserved].

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY;
APPOINTMENT OF LEAD BORROWER

1.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this

Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Agent against (x) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Lead Borrower or the Agent, as the case may be, after any payment of Taxes by the Lead Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent, at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's

reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Lead Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or

Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Lead Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Agent as may be necessary for the Lead Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including

Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided, that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Grandfathered Obligations. From and after the Closing Date Date, the Borrowers shall indemnify the Agent, and hold it harmless from, any and all losses, claims, damages, liabilities and related expenses, including Taxes and the fees, charges and disbursements of any counsel for any of the foregoing, arising in connection with the Agent's treating, for purposes of determining withholding Taxes imposed under FATCA, this Agreement as qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471- 2(b)(2)(i).

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

1.02 Illegality. If any Lender determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on written notice thereof by such Lender to the Lead Borrower through the Agent, (i) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate, in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR component of the Base

Rate with respect to any Base Rate Loans, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

1.03 Inability to Determine Rates. (a) If in connection with any request for a Term SOFR Loan hereunder or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any such Loans, as applicable, (i) the Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Lead Borrower may revoke any pending request for a borrowing of, or conversion to or continuation of, Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that: (i) adequate and reasonable means do not exist for ascertaining the applicable Interest Period of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or (ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided, that at the time of such statement, there is no successor administrator that is satisfactory to the Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month

or six month (as applicable) interest period of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date"); then, on a date and time determined by the Agent (any such date, the "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR plus the SOFR Adjustment for any payment period for interest calculated that can be determined by the Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate").

(c) If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

(d) Notwithstanding anything to the contrary herein, (i) if the Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Agent and the Lead Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar
U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Lead Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders object to such amendment.

(e) The Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of the implementation of any Successor Rate.

(f) Any Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent such market practice is not administratively feasible for the Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Agent.

(g) Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than the Floor, the Successor Rate will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

(h) In connection with the implementation of a Successor Rate, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to

the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided, that with respect to any such amendment effected, the Agent shall post each such amendment implementing such Conforming Changes to the Lead Borrower and the Lenders reasonably promptly after such amendment becomes effective.

1.04 Increased Costs; Reserves on Term SOFR Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in Term SOFR);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the SOFR market any other condition, cost or expense affecting this Agreement or Term SOFR Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making to, continuing or maintaining any Term SOFR Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender the amount shown as due on any such certificate within 20 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided, that the Loan Parties shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

1.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Term SOFR Loan made by it at Term SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such Term SOFR Loan was in fact so funded.

1.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such

Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

1.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Commitments and repayment of all other Obligations hereunder.

1.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Loans, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Loans so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Loans are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Loan. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV CONDITIONS PRECEDENT TO LOANS

1.01 Conditions of the Term Loans. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:

(i) counterparts of this Agreement each properly executed by a Responsible Officer of the signing Loan Party and the Lenders sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) a Note or Notes executed by the Borrowers in favor of each Lender requesting a Note or Notes;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents, in each instance certified as true, correct and complete by a Responsible Officer of each applicable Loan Party, and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Bass, Berry & Sims PLC, counsel to the Loan Parties, addressed to the Agent and each Lender and addressing such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the representations and warranties of each Loan Party contained in Article V and in each other Loan Document are true and correct in all material respects on and as of the Closing Date, except (1) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date and (2) in the case of any representation or warranty qualified by materiality, such representation or warranty shall be true and correct in all respects, (B) that no Default or Event of Default exists or would result from the entry into this Agreement, the transactions contemplated herein, or from the application of the proceeds thereof, (C) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (D) to the Solvency of the Loan Parties as of the Closing Date after giving effect to the transactions contemplated hereby, and (E) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(viii) an amendment to the ABL Credit Agreement, duly executed by the Persons party thereto;

(ix) the ABL Intercreditor Agreement, duly executed by the Persons party thereto;

(x) the Investor Rights Agreement, duly executed by each of the applicable Persons party thereto;

(xi) the License Agreement, duly executed by each of the applicable Persons party thereto;

(xii) the Osmium Shareholder Voting Agreement;

(xiii) a Notice of Borrowing/Continuation/Conversion duly executed by the applicable Loan Parties;

(xiv) the Security Documents and, subject to the terms of the ABL Intercreditor Agreement, certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(xv) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xvi) the Collaboration Agreement, duly executed by each of the applicable Persons party thereto;

(xvii) the Subscription Agreement, duly executed by each of the applicable Persons party thereto;

(xviii) duly executed pay-off and/or release letters, termination statements, canceled mortgages and the like reasonably required by the Administrative Agent in connection with the removal of any Liens (other than Permitted Encumbrances), including, without limitation, all tax liens, against the assets of the Borrowers, the repayment of the Existing Credit Agreement or the release of a Loan Party from a guaranty therefor;

(xix) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases or subordination agreements satisfactory to the Agent are being tendered concurrently herewith or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases have been made;

(xx) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the second priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent; and

(xxi) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require.

(b) [Reserved].

(c) The Agent shall have received a true, correct and complete copy of the Borrowing Base Certificate (as defined in the ABL Credit Agreement) most recently delivered to the ABL Agent prior to the Closing Date.

(d) The Agent shall be reasonably satisfied that any financial statements delivered to it and the Lenders fairly present the business and financial condition of the Loan Parties and that there has been no Material Adverse Effect since the date of the Audited Financial Statements.

(e) The Agent and the Lenders shall have received and be satisfied with
(i) updated projections through the Loan Parties' Fiscal Year ending February 2, 2025, which shall include an ABL Availability model, Consolidated income statement, balance sheet, and statement of cash flow, by month, each prepared in conformity with GAAP and consistent with the Loan Parties' then current practices and (ii) such other information (financial or otherwise) reasonably requested by the Agent.

(f) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(g) There shall not have occurred any default of any Material Contract of any Loan Party which would reasonably be expected to have a Material Adverse Effect.

(h) The consummation of the transactions contemplated hereby shall not violate any Law or any Organization Document.

(i) All fees required to be paid to the Agent on or before the Closing Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(j) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(k) The Agent and the Lenders shall have received all documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least ten (10) days prior to the Closing Date. At least five (5) days prior to the Closing Date, any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower.

(l) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

1.01 Existence, Qualification and Power. Each Loan Party (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

1.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not
(a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award

to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law.

1.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the second priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

1.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

1.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of the Parent and its Subsidiaries dated August 31, 2024, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) To the best knowledge of the Lead Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial

information delivered or to be delivered to the Agent or the Lenders, (ii) [reserved], (iii) of covenant compliance calculations provided hereunder or (iv) of the assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries on a Consolidated basis.

(e) The Consolidated forecasted balance sheet and statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.

1.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

1.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

1.08 Ownership of Property; Liens.

(a) Each of the Loan Parties has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases) that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties, together with the name of each lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party is subject to no Liens, other than Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.

1.09 Environmental Compliance.

(a) No Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned or operated by any Loan Party is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party.

(c) No Loan Party is undertaking, and no Loan Party has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party.

1.10 Insurance. The properties of the Loan Parties are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts (after giving effect to any self-insurance), with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. As of the Closing Date, each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

1.11 Taxes. The Loan Parties have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

1.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Lead Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Lead Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Lead Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Lead Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Lead Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Lead Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Each Loan Party represents and warrants as of the Closing Date that such Loan Party is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Loans, the Commitments or this Agreement.

1.13 Subsidiaries; Equity Interests. As of the Closing Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. As of the Closing Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.13 and, except for the outstanding Equity Interests in the Parent, are free and clear of all Liens except for those created under the Security Documents. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

1.14 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Loans shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

1.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that with respect to

projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

1.16 Compliance with Laws. Each of the Loan Parties is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

1.17 Intellectual Property; Licenses, Etc. The Loan Parties own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Lead Borrower, no current Intellectual Property employed, or now contemplated to be employed, by any Loan Party infringes upon any current Intellectual Property rights held by any other Person. No claim or litigation regarding any of the foregoing is pending against any of the Loan Parties or, to the best knowledge of the Lead Borrower, threatened in writing against any of the Loan Parties, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

1.18 Labor Matters.

There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound.

1.19 Security Documents.

(a) The Security Agreement creates in favor of the Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the offices specified in Schedule II of the Security Agreement. Upon such filings and/or the obtaining of "control" (as defined in the UCC), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected under the UCC (in effect on the date this representation is made) by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC) or by obtaining control, in each case prior and superior in right to any other Person.

(b) When the Security Agreement (or a short form thereof) is filed in the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the offices specified on Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property Collateral (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

1.20 Solvency.

After giving effect to the funding of the Term Loans and the use of proceeds thereof on the Closing Date, the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

1.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository;
(iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or

payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

1.22 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

1.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

1.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

1.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

1.26 EEA Financial Institution. None of the Loan Parties is an EEA Financial Institution.

1.27 Sanctions Concerns and Anti-Corruption Laws. (a) No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions, and to the knowledge of each Borrower, the Loan Parties and their Subsidiaries are in compliance with such anti-corruption laws and applicable Sanctions in all material respects.

1.28 Beneficial Ownership Certification. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

1.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the Fiscal Quarters of each Fiscal Year of the Parent, (x) a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows and (y) a detailed calculation of Consolidated EBITDA (including for the avoidance of doubt each component part thereof) for such Fiscal Quarter, and for the portion of the Parent's Fiscal Year then ended and solely with respect to clause (y) above, for the three-month period then ending, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and;

(i) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Parent, (x) a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Month, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows and (y) a detailed calculation of Consolidated EBITDA (including for the avoidance of doubt each component part thereof) for such Fiscal Month, for the portion of the Parent's Fiscal Year then ended and solely with respect to clause (y) above, for the three-month period then ending, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its

Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) as soon as available, but in any event no more than 30 days after the end of each Fiscal Year of the Parent, forecasts prepared by management of the Lead Borrower, in form satisfactory to the Agent, of ABL Availability and the Consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a monthly basis for the immediately following Fiscal Year (including the fiscal year in which any Maturity Date occurs) and as soon as available, any significant revisions to such forecast with respect to such Fiscal Year.

1.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) [reserved];

(c) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Registered Public Accounting Firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange;

(e) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(f) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Loan Parties, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent, or any Lender through the Agent, may reasonably specify;

(g) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(h) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence

received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect;

(i) promptly following any request therefor, provide information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation;

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request;

(k) promptly, to the extent not delivered hereunder, any notices, certificates or other documents delivered to the ABL Agent under Section 6.02, 6.03, 6.10 or 6.14 of the ABL Credit Agreement (including without limitation any Notice of Borrowing/Continuation/Conversion (as defined in the ABL Credit Agreement)); and

(l) commencing with the Closing Date and on a monthly basis, by not later than 5:00 pm (ET) on the fifteenth (15th) day of each Fiscal Month, a 13-week cash flow forecast (the "Cash Flow Forecast") in form and substance reasonably satisfactory to the Agent, reflecting the Loan Parties' (i) good faith projections of all weekly cash receipts and disbursements on a line item basis in connection with the operation of their businesses for the following 13-week period, and (ii) calculations of the Borrowing Base, Inventory receipts and Availability for each week of such 13-week period; provided that at any time that an Accelerated Borrowing Base Delivery Event (as defined in the ABL Credit Agreement) has occurred and is continuing, the Cash Flow Forecast shall be delivered on Thursday of each week (or, if Thursday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday.

Documents required to be delivered pursuant to Section 6.01(a) or 6.01(b), or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that: (i) the Lead Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in

any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent will make available to the Lenders materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

1.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect,

(c) (i) of any breach or non-performance of, or any default under, a Material Contract (other than any Investor Document) or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof; (ii) the failure by any Loan Party or any Subsidiary to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Investor Document; or (iii) the failure of any Loan Party or any Subsidiary to observe or perform any material agreement or obligation under any Investor Document in accordance with the terms of such Investor Document,

(d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority, in each case having a value of more than $250,000; or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws, in each case having a value of more than $250,000;

(e) of the occurrence of any ERISA Event;

(f) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(g) of any change in any Loan Party's senior executive officers;

(h) of the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(i) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) of the filing of any Lien for unpaid Taxes against any Loan Party;

(k) of any casualty or other insured damage to any portion of the Collateral having a value of more than $250,000 or the commencement of any action or proceeding for the taking of any interest in a portion of the Collateral having a value of more than $250,000 under power of eminent domain or by condemnation or similar proceeding or if any portion of the Collateral having a value of more than $250,000 is damaged or destroyed;

(l) of any transaction of the nature contained in Article VII hereof, occurring after the Closing Date, and

(m) of any failure by any Loan Party to pay rent at (i) any of the Loan Parties' distribution centers or warehouses; (ii) five percent (5%) or more of such Loan Party's Store locations or (iii) any of such Loan Party's locations if such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto.

1.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators, and carriers) which, if unpaid, would by Law become a Lien upon its property; and
(c) all Material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

1.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable

action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except (i) to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties, or (ii) where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

1.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

1.07 Maintenance of Insurance. (a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent that are not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(c) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(d) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(e) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, the Agent or any other party shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(f) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(g) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

1.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

1.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) at all times retain a Registered Public Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Registered Public Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial

performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm, as may be raised by the Agent.

1.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or an Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) [reserved], (ii) financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Loan Parties' business plan, forecasts and cash flows. The Loan Parties shall pay the reasonable fees and expenses of the Agent and such professionals with respect to up to one (1) commercial finance examination in any twelve month period; provided, that in the event that ABL Availability is at any time less than thirty percent (30%) of the ABL Loan Cap during such twelve month period, the Agent may conduct two (2) commercial finance examinations in such twelve month period, at the Loan Parties' expense. Notwithstanding the foregoing, the Agent may cause additional commercial finance examinations to be undertaken (i) as it in its discretion deems necessary or appropriate, at its own expense or, (ii) if required by Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

(c) [Reserved].

(d) Notwithstanding the foregoing provisions of Section 6.10(b) to the contrary, Agent shall not conduct commercial field examinations or appraisals so long as the ABL Agent conducts the maximum number of commercial field examinations and appraisals permitted to be conducted at the Loan Parties' expense under the ABL Credit Agreement as in effect as of the Closing Date and the results of such all such commercial field examinations and appraisals are promptly delivered to the Agent (subject to Agent's execution of non-reliance letters with respect thereto in customary form).

1.11 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within twenty (20) days or such longer time period as the Agent may agree in its reasonable discretion), cause any such Person (a) which is not a CFC to (i) become a Loan Party by executing and delivering to the Agent a Joinder Agreement to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent

documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC, the Equity Interests of such Subsidiary to be pledged may be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary), in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.11 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower.

1.12 Cash Management.

(a) Not later than sixty (60) days after the Closing Date (or such later date as agreed by the Agent in its sole discretion), enter into a Blocked Account Agreement satisfactory in form and substance satisfactory to the Agent with each Blocked Account Bank (collectively, the "Blocked Accounts"); and

(b) From and after the Closing Date, the Loan Parties shall comply in all respects with Section 6.12 of the ABL Credit Agreement, as in effect on the date of this Agreement, including, upon the occurrence of a Cash Dominion Event, to cause all receipts and collections to be transferred daily to the Concentration Account (as defined in the ABL Credit Agreement) for application against the ABL Obligations in accordance with the provisions of the ABL Credit Agreement as in effect as of the date of this Agreement.

1.13 Information Regarding the Collateral.

(a) Furnish to the Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's name; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected second priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto become inaccurate or misleading in any material respect as a result of changes after the Closing Date, advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other

Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered materially inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

1.14 Physical Inventories.

(a) Cause not less than one physical Inventory to be undertaken, at the reasonable expense of the Loan Parties, in each Fiscal Year consistent with past practices, conducted by such Inventory takers as are reasonably satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding Inventory or as otherwise may be reasonably satisfactory to the Agent. The Agent, at the reasonable expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within 21 days following the completion of such Inventory, shall provide the Agent with a reconciliation of the results of such Inventory (as well as of any other physical Inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable, in a manner satisfactory to the Agent.

(b) Permit the Agent, in its discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

(c) Notwithstanding anything to the contrary in this Section 6.14, Agent shall not conduct any physical inventories so long as the ABL Agent conducts the maximum number of physical inventories permitted to be conducted at the Loan Parties' expense under the ABL Credit Agreement as in effect as of the Closing Date and the results of such physical inventories are promptly delivered to the Agent (subject to Agent's execution of non-reliance letters with respect thereto in customary form).

1.15 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise materially comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release

of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

1.16 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Law, or which any Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the reasonable expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien or second-priority Lien, as applicable, under the Security Documents upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.16, all at the reasonable expense of the Loan Parties. In no event shall compliance with this Section 6.16(b) waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.16(b) if such transaction was not otherwise expressly permitted by this Agreement.

(c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by any Loan Party after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of such Loan Party in the property that is the subject of such Lease.

1.17 Compliance with Terms of Leaseholds.

Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party to keep such Leases in full force and effect (except those payments or obligations which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP), (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except in the ordinary course of business, consistent with past practices, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing, except, in any case, where the

failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

1.18 Material Contracts. (a) Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect in all material respects except to the extent such Material Contract is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, (c) enforce each such Material Contract in accordance with its terms,
(d) upon request of the Agent, make such demands and requests for information and reports or for action from any other party to each such Material Contract as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (e) cause each of its Subsidiaries to do the foregoing.

1.19 Post-Closing Obligations. Satisfy the requirements and/or provide to the Agent each of the documents, instruments, agreements and information set forth on Schedule 6.19, in form and substance reasonably acceptable to the Agent, on or before the date specified for such requirement on such Schedule or such later date to be determined by the Agent in its sole discretion.

1.20 Board Observer. From the date hereof until the earlier to occur of (i) the date on which all outstanding Obligations (other than unasserted contingent indemnification Obligations) have been paid in full and the Commitments are irrevocably terminated hereunder, or (ii) the date on which neither Beyond nor any of its Affiliates is a Lender or Agent hereunder, the Loan Parties shall cause Beyond to have the right to appoint one (1) individual as a non-voting observer to the board of managers of Parent (the "Board" and such observer, the "Board Observer"), and shall cause the Board Observer to be entitled to attend meetings of the Board and any committee of the Board and to receive all information provided to the members of the Board or its committees (including minutes of previous meetings of the Board or such committees); provided, that (i) the Board Observer shall not be entitled to vote on any matter submitted to the Board or any of its committees nor to offer any motions or resolutions to the Board or such committees; and (ii) the Board may withhold information or materials from the Board Observer and exclude the Board Observer from any meeting or portion thereof (x) if (as reasonably determined by the Board) access to such information or materials or attendance at such meeting would (A) adversely affect the attorney-client or work product privilege between the Parent and its counsel or (B) result in a conflict of interest or is otherwise required to avoid any disclosure that is restricted by any agreement with another Person or (y) (A) when any Agent, any Lender, the Loan Documents or the Obligations are the subject matter under discussion or (B) when such board materials or discussion relate directly to any Loan Party's relationship, contractual or otherwise, with Beyond or any of its Affiliates, any Agent or the Lenders or any actual or potential transactions between or involving any Loan Party and Beyond or any of its Affiliates, any Agent or the Lenders. For the avoidance of doubt, the Board Observer (x) shall not constitute a manager and/or member of a Board committee and (y) shall not be entitled to any rights other than those provided by this Section 6.20.

1.21 Delivery of Certain Collateral Documents. Deliver executed Collateral Access Agreements and Blocked Account Agreements in favor of the Agent on identical terms, and addressing identical Collateral, as any Collateral Access Agreement (as defined in the ABL Credit

Agreement) or Blocked Account Agreement (as defined in the ABL Credit Agreement) entered into by the Loan Parties and delivered to the ABL Agent after the Closing Date, in each instance concurrent with the delivery of such Collateral Access Agreement or Blocked Account Agreement, as applicable, to the ABL Agent.

ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

1.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

1.02 Investments. Make any Investments, except Permitted Investments; provided, that,
(i) no Permitted Investments (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Investment is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

1.03 Indebtedness; Disqualified Stock; Equity Issuances.

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; (b) issue Disqualified Stock, or (c) issue and sell any other Equity Interests (other than compensatory issuances of Equity Interests to employees, directors or consultants (including under any option plan)) of the Loan Parties unless (i) such Equity Interests shall be issued solely by the Parent,
(ii) such Equity Interests provide that all dividends and other Restricted Payments in respect thereof shall be made solely in additional shares of such Equity Interests in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Parent issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.

1.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing) (including, in each case, pursuant to a Division), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge with (i) a Loan Party, provided, that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided, that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge into any Subsidiary which is a Loan Party or into a Borrower, provided, that in any merger involving a Borrower, a Borrower shall be the continuing or surviving Person;

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and such Person shall become a Loan Party in accordance with the provisions of Section 6.11 hereof, and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(d) any CFC that is not a Loan Party may merge into any CFC that is not a Loan Party.

1.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions; provided, that, (i) no Permitted Dispositions (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Permitted Disposition is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

1.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each of the following shall be permitted so long as no Default or Event of Default shall have occurred and be continuing prior, or immediately after giving effect, to the following, or would result therefrom:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) if (i) (x) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) have been outstanding for the six (6) month period immediately preceding such payment, (y) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) are projected to be borrowed by the Borrowers pursuant to the projections delivered by the Loan Parties pursuant to Section 6.01(c) hereof for the six (6) month period immediately following such payment, and (z) the Parent uses cash on hand to make such payment, or (ii) the RP Conditions are satisfied, the Loan Parties and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it; and

(d) if (i) (x) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) have been outstanding for the six (6) month period immediately preceding such payment, (y) no Loans are projected to be borrowed by the Borrowers pursuant to the projections delivered by the Loan Parties pursuant to Section 6.01(c) hereof for the six (6) month period immediately following such payment, and (z) the Parent uses cash on hand to make such payment, or (ii) the RP Conditions are satisfied, the Parent may declare or pay cash dividends to its stockholders;

provided, that, (i) no Restricted Payment (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Restricted Payment is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, such Intellectual Property shall be subject to a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

1.07 Prepayments of Indebtedness.

Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) as long as no Default or Event of Default then exists, regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of
(i) Permitted Indebtedness (other than Subordinated Indebtedness), and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof, (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness) as long as the Payment Conditions are satisfied, and
(ii) Subordinated Indebtedness in accordance with the subordination terms thereof and as long as the Payment Conditions are satisfied, and (c) Permitted Refinancings of any such Indebtedness.

1.08 Change in Nature of Business.

(a) In the case of the Parent, engage in any business or activity other than (a) the direct or indirect ownership of all outstanding Equity Interests in the other Loan Parties,
(b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its

obligations thereunder, and (e) activities incidental to the businesses or activities described in clauses (a) through (d) of this Section 7.08(a).

(b) In the case of each of the Loan Parties, engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

1.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided, that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties,
(b) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (c) the issuance of Equity Interests in the Parent to any officer, director, employee or consultant of the Parent or any of its Subsidiaries, (d) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Parent or any of its Subsidiaries, and (e) as long as no Change of Control results therefrom, any issuances of securities of the Parent (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in the Parent) of the Parent or any of its Subsidiaries.

1.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations,
(iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (d) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

1.11 Use of Proceeds. Use the proceeds of any Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, or (b) for any purposes other than (i) the repayment in full of Indebtedness under the Existing Credit Agreement, (ii) the payment on the Closing Date of transaction costs incurred in connection with the Closing Date transactions, (iii) to repay amounts owing under the ABL Credit Agreement and
(iv) to finance Capital Expenditures, and (v) for general corporate purposes, in each case to the extent expressly permitted under the Loan Documents.

1.12 Amendment of Material Documents.

Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any Permitted Refinancing thereof), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties, or otherwise would be reasonably likely to have a Material Adverse Effect.

1.13 Fiscal Year.

Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

1.14 Deposit Accounts; Credit Card Processors.

Open new DDAs unless the Loan Parties shall have delivered to the Agent Blocked Account Agreements consistent with the provisions of Section 6.12 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.12 hereof.

1.15 [Reserved].

1.16 Sanctions.

Directly or indirectly, use any Loans or the proceeds of any Loans, or lend, contribute or otherwise make available such Loan or the proceeds of any Loan to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise) of Sanctions.

1.17 Anti-Corruption Laws.

Directly or indirectly, use any Loans or the proceeds of any Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

1.18 Bank Product Obligations. Incur any Bank Product Obligations (as defined in the ABL Credit Agreement) without the prior written consent of the Agent (acting in its sole discretion).

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

1.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of, or interest on, any Loan, or (ii) any

fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.19, 6.20 or 6.21 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 10 days after the sooner to occur of Lead Borrower's receipt of notice of such breach or failure from the Agent and the date on which such breach or failure first becomes known to any Loan Party; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Material Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded, or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined in such Swap Contract) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined in such Swap Contract) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than $500,000; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 60 calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any

Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an amount exceeding $250,000 as to any one such judgment or order or in an aggregate amount exceeding $500,000 as to all such judgments and orders (in each case to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $200,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $200,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document (subject to the terms of the ABL Intercreditor Agreement); or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except as otherwise expressly permitted hereunder, the Loan Parties, taken as a whole, shall take any action to suspend the operation of their business in the ordinary course, liquidate all or a material portion of their assets or Store locations, or

employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of their business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Breach of Contractual Obligation. (i) Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract (other than any Investor Document) or fails to observe or perform any other agreement or condition relating to any such Material Contract (other than any Investor Document or contained in any instrument or agreement evidencing, securing or relating thereto), or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract (other than any Investor Document) to terminate such Material Contract (other than any Investor Document); (ii) any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Investor Document, provided that, for the avoidance of doubt, the withholding of payment of any amount by any Loan Party or any Subsidiary thereof that is the subject of a good faith dispute between such Person and the Agent shall not be an Event of Default hereunder; or (iii) any Loan Party or any Subsidiary thereof fails to observe or perform any material agreement or obligation under any Investor Document in accordance with the terms of such Investor Document; or

(o) Indictment. (i) Any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any Collateral having a value in excess of $250,000, or (ii) any director or senior officer of any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(p) Guaranty. The termination or attempted termination of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the subordination provisions related to such Subordinated Indebtedness, (B) that such subordination provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of such subordination provisions.

1.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans to be terminated, whereupon such Commitments and obligations shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) [reserved]; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

provided, however, that upon the occurrence of any Default or Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate, and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

1.03 Application of Funds. After the exercise of any remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including Credit Party Expenses to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, [Reserved];

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, and fees, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.04(b)), ratably among the Credit Parties in proportion to the respective amounts described in this clause Sixth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

ARTICLE IX THE AGENT

1.01 Appointment and Authority.

Each of the Lenders (in its capacity as a Lender) hereby irrevocably appoints Agent to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

1.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

1.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

1.04 Reliance by Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

1.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent.

1.06 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided, that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder with notice of such acceptance provided to the Lead Borrower, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed to in writing between the Lead

Borrower and such successor Agent. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

1.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

1.08 [Reserved].

1.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other reasonable amounts due the Lenders the Agent and such Credit Parties under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other reasonable amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

1.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(c) to release any Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party or any other Person designated by the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

1.11 Notice of Transfer.

The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

1.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) [reserved];

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all financial statements

required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Reports, and shall not be liable for any information contained in any Report;

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Loans that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

1.13 Agency for Perfection.

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Law of the United States can be perfected only by possession or control. Should any Lender (other than the Agent) obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

1.14 Indemnification of Agent. Without limiting the obligations of Loan Parties hereunder, the Lenders shall indemnify the Agent and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent and its Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting

from the Agent's and its Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

1.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

1.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender; third, [reserved]; fourth, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans and funded are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 9.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay

amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) [Reserved].

(iv) [Reserved].

(v) [Reserved].

(b) Defaulting Lender Cure. If the Lead Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 9.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

1.17 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Agent makes a payment hereunder in error to any other Credit Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE X MISCELLANEOUS

1.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent

shall be effective only in the specific instance and for the specific purpose for which given;

provided, however, that no such amendment, waiver or consent shall: (a)

(i) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(ii) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including any Maturity Date) of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender, or (ii) any mandatory prepayment of the Term Loans hereunder or under any other Loan Document, without the written Consent of such Lender;

(iii) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of such Lender; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(iv) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written Consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.10, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(viii) [reserved];

(ix) [reserved]; and

(x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under

the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, any Loan Document may be amended and waived with the consent of the Administrative Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section 10.06 (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

1.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER
MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier

number and electronic mail address to which notices and other communications may be sent and
(ii) accurate wire instructions for such Lender.

(e) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, reasonable expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

1.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

1.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries,
(iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether

based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related reasonable expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable on demand therfor.

(e) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

1.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under

clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

1.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided, that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment or Term Loan if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Loan Parties or any of the Loan Parties' Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or
(C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lead Borrower and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and
(y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee

of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, including, for the avoidance of doubt, the obligation to provide the Lead Borrower and the Agent with any tax forms required by Section 3.01(e) hereof, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any

amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New

York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) [Reserved].

1.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto,
(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or
(ii) [reserved], (g) with the consent of the Lead Borrower or (h) to the extent such Information
(x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided, that in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

1.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or other property at any

time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.12 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

1.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

1.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

1.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and

warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Loans, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any Obligations that may thereafter arise under Section 10.04 hereof.

1.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

1.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

1.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN

PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR ANY FEDERAL COURT SITTING THEREIN AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

1.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

1.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect

to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

1.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

1.18 Foreign Asset Control Regulations. The Loan Parties agree that neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Loan Parties or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions,

or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

1.19 Time of the Essence. Time is of the essence of the Loan Documents.

1.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

1.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or

equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Loan Party is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101
(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code,

Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

1.22 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

1.23 Attachments.

The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

1.24 [Reserved].

1.25 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Facility Guaranty voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

1.26 Acknowledgement and Consent to Bail-In of an Affected Financial Institution. Notwithstanding anything to the contrary in any Loan Document or in any other agreement,

arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if

applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

1.27 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with

respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

1.28 Electronic Execution of Certain Other Documents. This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent and each of the Credit Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Agent has agreed to accept such Electronic Signature, the Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

ARTICLE XI CONVERSION; EXCHANGE

1.01 Conversion.

(a) At any time on or prior to the Convertible Term Loan Maturity Date and prior to the Exchange, (the "Conversion Period"), (i) prior to Shareholder Approval, the Agent shall have the right to convert any portion of the principal and accrued interest of the Convertible Term Loans into shares of common stock, no par value of Parent ("Parent Common Stock") that represent a number of shares not exceeding the Elective Conversion Cap and equaling the total amount of principal and accrued interest of the Convertible Term Loans being converted divided by the Conversion Price (such shares the "Elective Conversion Shares" and such conversion, the

"Elective Conversion") upon Agent's delivery of notice of its intent to effectuate such conversion and (ii) upon Shareholder Approval the outstanding principal and accrued interest of the Convertible Term Loans shall be automatically converted on the date of delivery of such Shareholder Approval (in all instances, such date the "Conversion Date") into shares of Parent Common Stock not exceeding the Automatic Conversion Cap that represent a number of shares equaling the total amount of principal and accrued interest of the Convertible Term Loans being converted divided by the Conversion Price (such shares the "Automatic Conversion Shares" and such conversion, the "Automatic Conversion").

(b) [Reserved].

(c) All costs and expenses (including filing fees) with respect to filings under any applicable antitrust laws shall be borne by Parent. Parent shall pay any documentary, stamp or similar issue or transfer tax due on the issue of the Conversion Shares. Parent shall reserve (and shall keep available and free from preemptive rights) and shall continue to reserve out of its authorized but unissued Parent Common Stock a sufficient number of Parent Common Stock to permit the issuance of the Conversion Shares in full.

(d) Parent shall (i) issue the Conversion Shares to the Lenders on a pro rata basis based on each Lender's portion of the outstanding amount of the Convertible Term Loans on the Conversion Date (along with any share certificates with respect thereto) in accordance with the Convertible Notes and the Subscription Agreement and such Conversion Shares shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, not subject to any preemptive rights, and, be free from all taxes, Liens, security interests, charges, and other encumbrances with respect to the issuance thereof, other than taxes in respect of any transfer occurring contemporaneously with such issue and those under applicable federal, state or other securities laws and (ii) provide customary representations and warranties to the Lenders in connection with the Conversion pursuant to and in the form set forth in the Subscription Agreement.

1.02 Exchange. If the Automatic Conversion has not occurred on the Convertible Term Loan Maturity Date, the Administrative Agent shall exchange the Convertible Term Loans for Non-Convertible Exchange Term Loans in the same amount (the "Exchange"). After the Exchange, the Convertible Term Loans shall constitute Non-Convertible Term Loans for all purposes under this Agreement and, for the avoidance of doubt, the Convertible Term Loan Maturity Date shall be the Non-Convertible Term Loan Maturity Date.

1.03 Effect of Conversion on Conversion Amount. Without limiting Article II, upon the effectiveness of any Conversion on the applicable Conversion Date, such Conversion shall be deemed a full repayment of the amount of the Convertible Term Loans converted on such Conversion Date.

TN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written,

BORROWERS:

KIRKLAND'S STORES, INC., as Lead Borrower and as a Borrower

By: /s/ W. Michael Madden

Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

KIRKLAND'S TEXAS, LLC, as a Borrower

By: /s/ W. Michael Madden

Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

KIRKLAND'S, INC., as Parent and as a Guarantor

By: /s/ W. Michael Madden

Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

KIRKLAND'S DC, INC., as a Guarantor

By: /s/ W. Michael Madden

Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

ADMINISTRATIVE AGENT AND LENDERS:

BEYOND, INC., as Administrative Agent, Collateral Agent and a Lender

By: /s/ Marcus Lemonis

Name: Marcus Lemonis
Title: Executive Chairman

SCHEDULES TO TERM LOAN CREDIT AGREEMENT

1.01	Borrowers
2.01	Commitments and Applicable Percentages
5.01	Loan Parties' Organizational Information
5.08(b)(1)	Owned Real Estate
5.08(b)(2)	Leased Real Estate
5.10	Insurance
5.13	Subsidiaries; Other Equity Investments
5.18	Collective Bargaining Agreements
5.21(a)	DDAs
5.21(b)	Credit Card Arrangements
5.24	Material Contracts
6.02	Financial and Collateral Reporting
6.19	Post-Closing Obligations
7.01	Existing Liens
7.02	Existing Investments
7.03	Existing Indebtedness
10.02	Agent's Office; Certain Addresses for Notices

Schedule 1.01

BORROWERS

1. Kirkland's Stores, Inc.

2. Kirkland's Texas, LLC

Schedule 2.01

COMMITMENTS AND APPLICABLE PERCENTAGES

Lender	**Convertible Term Loan Commitment**	**Non-Convertible Term Loan Commitment**	**Applicable Percentage of Convertible Term Loan Commitment**	**Applicable Percentage of Non-Convertible Term Loan Commitment**
Beyond, Inc.	$8,500,000.00	$8,500,000.00]	100.000000000%	100.000000000%
TOTAL	$8,500,000.00	$8,500,000.00]	100.000000000%	100.000000000%

Schedule 5.01

LOAN PARTIES' ORGANIZATIONAL INFORMATION

Loan Party	State of Incorporation/Formation	Organization Type	Organization Number	EIN
Kirkland's, Inc.	Tennessee	Corporation	TN 000099820	62-1287151
Kirkland's Stores, Inc.	Tennessee	Corporation	TN 00381682	62-1804982
Kirkland's Texas, LLC	Tennessee	Limited Liability Company	TN 000645398	27-4129691
Kirkland's DC, Inc.	Tennessee	Corporation	TN 000645396	27-4129776

OWNED REAL ESTATE

None.

LEASED REAL ESTATE

See Attachment to Schedule 5.08(b)(2).

Store List

Intranet **Version 8.4.24**

Store Count: 325

Store	Region	Regional Director	District	District Manager	Store Manager	Mall	Address	City	State	Zip	Phone	Monday-Thursday Hours	Friday Hours	Saturday Hours	Sunday Hours	Time Zone	Open Date	Center Type
297	KIRK	Joedy Davis	KH18	Carolyn Needham	AIDA CERIC-SUVALIC	Friendly Shopping Center	621 Friendly Center Road	Greensboro	NC	27408	336-315-0396	10am-7pm	10am-8pm	10am-9pm	11am-6pm	EST	11/24/1999	Non-Mall
335	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	CARRIE JARBOE	Mall Park Center	1994 North Dixie Avenue	Elizabethtown	KY	42701	270-769-0882	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	4/18/2003	Non-Mall
366	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Ryan Lewis	Desert Ridge Marketplace	21001 North Tatum Boulevard, #54	Phoenix	AZ	85050	480-513-9101	10am-7pm	10am-8pm	10am-8pm	11am-6pm	MST	11/26/2003	Non-Mall
374	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Misty Webster	Dana Park	1854 S. Val Vista Drive, #106	Mesa	AZ	85204	480-813-1640	10am-7pm	10am-8pm	10am-8pm	11am-6pm	MST	5/26/2004	Non-Mall
377	KIRK	Joedy Davis	KH14	Erick Bode	Bridget Gross	The Columns	1101 Vann Drive	Jackson	TN	38305	731-664-9397	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	5/26/2004	Non-Mall
387	KIRK	Joedy Davis	KH19	Stacy Davis	Victoria Muncrief	Cornerstone Marketplace	258 Cornerstone Boulevard	Hot Springs	AR	71913	501-525-6770	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	7/22/2004	Non-Mall
393	KIRK	Joedy Davis	KH14	Erick Bode	Rebecca Skurski	Centre at Deane Hill	208 Morrell Road	Knoxville	TN	37919	865-769-5362	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	9/15/2004	Non-Mall
397	KIRK	Joedy Davis	KH14	Erick Bode	Ashlyn Craparo	Cox Creek Center	366B Cox Creek Parkway	Florence	AL	35630	256-764-7099	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/6/2004	Non-Mall
401	KIRK	Joedy Davis	KH26	Geneve Ponson	Hannah Keating	Eastern Shore Centre	30500 St. Hwy. 181, Suite 420	Spanish Fort	AL	36527	251-621-5003	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	11/17/2004	Non-Mall
403	KIRK	Joedy Davis	KH10	Wendy Scott	Gordon Halliday	The Avenue Viera	2271 Town Center Ave., Suite 111	Melbourne	FL	32940	321-639-1409	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/20/2004	Non-Mall
407	KIRK	Joedy Davis	KH17	Jeremy Salazar	Melanie Rabackoff	Franklin Boulevard	2625 E. Franklin Blvd., Suite 200	Gastonia	NC	28056	704-867-3609	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/7/2004	Non-Mall
420	KIRK	Joedy Davis	KH14	Erick Bode	N/A	Westside Center	6275 University Drive SW, Ste 29	Huntsville	AL	35806	256-922-9356	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	1/26/2005	Non-Mall
432	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Kyle Amundsen	Orland Park	170 Orland Park Place, Sp 106	Orland Park	IL	60462	708-349-0083	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	4/30/2005	Non-Mall
435	KIRK	Joedy Davis	KH25	Geoff Haun	Paul Ryan	O'Fallon Walk	2215 Highway K, Space 103	O'Fallon	MO	63366	636-240-7281	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	7/9/2005	Non-Mall
438	KIRK	Joedy Davis	KH24	LINDA DEROSE	Federico Lopez	Wolf Ranch Town Center	1019 W. University Ave., Suite 601	Georgetown	TX	78628	512-868-5757	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	8/31/2005	Non-Mall
440	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Robert Dykstra	San Tan Village	2763 S. Market Street, Suite 4	Gilbert	AZ	85296	480-855-6900	10am-7pm	10am-8pm	10am-8pm	11am-6pm	MST	7/27/2005	Non-Mall
446	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Carleen Peper-Bonnie	Woodbury Lakes	9220 Hudson Road, Suite 702	Woodbury	MN	55125	651-735-9411	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	9/9/2005	Non-Mall
448	KIRK	Joedy Davis	KH14	Erick Bode	Denise Thomas	Southaven Towne Center	6450 Towne Center Loop #610	Southaven	MS	38671	662-536-0040	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/5/2005	Non-Mall
450	KIRK	Joedy Davis	KH11	Liana Turner	LINDSAY GOTHARD	Colonial Promenade Alabast	300 Colonial Promenade Parkway, Ste	Alabaster	AL	35007	205-685-1299	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/5/2005	Non-Mall
452	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Keith Latta	Olivet Church Crossing	5187 Hinkleville Road, Suite D	Paducah	KY	42001	270-538-1660	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/5/2005	Non-Mall
453	KIRK	Joedy Davis	KH19	Stacy Davis	Marta Da Silva Pieltila	Smith Farm Marketplace	9018 N. 121st East Avenue, Suite 200	Owasso	OK	74055	918-272-3341	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/12/2005	Non-Mall
454	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Kami Mitchell	Waterford Park	1025 Veterans Parkway, Suite 500	Clarksville	IN	47129	812-258-0815	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	10/13/2005	Non-Mall
456	KIRK	Joedy Davis	KH19	Stacy Davis	Page Line	North Park Shopping Center	407 South Geneva Avenue	Joplin	MO	64801	417-626-7873	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	9/29/2005	Non-Mall
462	KIRK	Joedy Davis	KH24	LINDA DEROSE	Michael Lehberg	Rockwall Crossing	945 East I-30	Rockwall	TX	75087	214-771-0408	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/29/2005	Non-Mall
464	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Jeff Karpinski	Brookfield Fashion Center	16900 W. Bluemound Road, Suite B	Brookfield	WI	53005	262-786-2109	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/22/2005	Non-Mall
465	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	CHELSEA WHITT	Crestview Hills Town Center	2822 Town Center Boulevard	Crestview Hills	KY	41017	859-341-3235	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	10/27/2005	Non-Mall
466	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Kaya Rose-Bridge	Perry Crossing	2540 Perry Crossing Way	Plainfield	IN	46168	317-837-8096	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	10/28/2005	Non-Mall
467	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Krista Strobel	Voice of America Centre	7562 Voice of America Drive	West Chester	OH	45069	513-777-4741	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/2/2005	Non-Mall
468	KIRK	Joedy Davis	KH18	Carolyn Needham	Joanne Barrett	Aberdeen Commons	11088 US 15-501 Highway & Johnson	Aberdeen	NC	28315	910-692-2540	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/25/2005	Non-Mall
469	KIRK	Joedy Davis	KH26	Geneve Ponson	Jackie Ward	Turtle Creek Crossing	6143 Highway 98, Suite 70	Hattiesburg	MS	39402	601-271-8393	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	11/23/2005	Non-Mall
471	KIRK	Joedy Davis	KH10	Wendy Scott	Lynne Otto	Lakeside Village	1449 Town Center Drive	Lakeland	FL	33803	863-688-0075	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/17/2005	Non-Mall
472	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Stephanie Garton	Villages at Bay Park	820 Willard Drive, Suite 210	Ashwaubenon	WI	54304	920-497-3620	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/29/2005	Non-Mall
475	KIRK	Joedy Davis	KH26	Geneve Ponson	Kim Jones	Gateway Tiger Town	2630 Enterprise Drive, Bldg. M-3	Opelika	AL	36801	334-737-3742	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	12/11/2005	Non-Mall
479	KIRK	Joedy Davis	KH10	Wendy Scott	JANET FISHER	Gulf Coast Town Center	10012 Gulf Center Drive, Unit # 1	Fort Myers	FL	33913	239-466-6604	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	2/10/2006	Non-Mall
482	KIRK	Joedy Davis	KH21	LINDA DEROSE	Max Betancourt	Forum at Olympia Parkway	8319 Agora Parkway	Selma	TX	78154	210-566-9797	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	3/1/2006	Non-Mall
483	KIRK	Joedy Davis	KH17	Jeremy Salazar	Susan Zangler	Arcadian Shores Commons	10796 Kings Road	Myrtle Beach	SC	29572	843-449-9626	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	3/15/2006	Non-Mall
485	KIRK	Joedy Davis	KH10	Wendy Scott	Melissa Whiddon	Regency Square	2448 West Brandon Boulevard	Brandon	FL	33511	813-684-0343	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	4/6/2006	Non-Mall
488	KIRK	Joedy Davis	KH14	Erick Bode	MJ Vanhorn	Pavilion of Turkey Creek	11130 Parkside Drive	Knoxville	TN	37934	865-966-9384	10am-7pm	10am-8pm	10am-9pm	11am-7pm	EST	4/12/2006	Non-Mall
489	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Molly Haws	Burnsville Center	901 County Road 42 West, Ste B210	Burnsville	MN	55306	952-898-1957	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	4/26/2006	Non-Mall
494	KIRK	Joedy Davis	KH19	Stacy Davis	Ruby Dick	Branson Landing	205 Branson Landing Blvd.	Branson	MO	65616	417-239-0990	10am-7pm	10am-10pm	10am-10pm	10am-6pm	CST	5/26/2006	Non-Mall
497	KIRK	Joedy Davis	KH14	Erick Bode	Tamie Leigh	Five Oaks Center	1647 Parkway	Sevierville	TN	37862	865-774-9322	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	6/14/2006	Non-Mall
513	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Carrie Hebert, TSM	Lake Elsinore Marketplace	29229 Central Avenue, Suite B	Lake Elsinore	CA	92532	951-674-2783	10am-7pm	10am-8pm	10am-8pm	11am-6pm	PST	8/18/2006	Non-Mall
514	KIRK	Joedy Davis	KH21	LINDA DEROSE	Maryann Pesa	Champions Village Shopping	5207 FM 1960 Road West	Houston	TX	77069	281-397-8343	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	9/8/2006	Non-Mall
515	KIRK	Joedy Davis	KH21	LINDA DEROSE	Lisa Prejean	Conroe Marketplace	2932 Interstate 45 N	Conroe	TX	77303	936-441-5475	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	8/16/2006	Non-Mall
519	KIRK	Joedy Davis	KH21	LINDA DEROSE	Marcia Chance	Deerbrook Marketplace	20536 Highway 59 N	Humble	TX	77338	281-446-3577	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	9/6/2006	Non-Mall
520	KIRK	Joedy Davis	KH19	Stacy Davis	Nicole Silmon	Alcoa Exchange	7365 Alcoa Road, Suite A	Bryant	AR	72022	501-778-2425	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	9/27/2006	Non-Mall
523	KIRK	Joedy Davis	KH18	Carolyn Needham	Nancy Robbins	Shoppes at Midway Plantatio	1004-C Shoppes at Midway Drive	Knightdale	NC	27545	919-266-6148	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/24/2006	Non-Mall
524	KIRK	Joedy Davis	KH21	LINDA DEROSE	Matthew Faz	The North Rim Shopping Ce	17610 La Cantera Parkway, Suite 120	San Antonio	TX	78257	210-694-1380	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	11/30/2006	Non-Mall

533	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Carmen Ortiz	Forum at Soncy	3350 S. Soncy Road, Suite 124	Amarillo	TX	79124	806-353-3607	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	2/14/2007	Non-Mall
534	KIRK	Joedy Davis	KH14	Erick Bode	Jessica Remscheid, MM	Countrywood Crossing	2289 N. Germantown Parkway, Suite 1	Cordova	TN	38016	901-213-0291	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	3/15/2007	Non-Mall
535	KIRK	Joedy Davis	KH10	Wendy Scott	Angie Kinsey	Island Walk	1989 East West Parkway	Orange Park	FL	32003	904-269-0702	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	5/2/2007	Non-Mall
536	KIRK	Joedy Davis	KH24	LINDA DEROSE	Cindy Spilberg	Robertson's Creek Shopping	5801 Long Praire Road, Ste 140	Flower Mound	TX	75028	972-539-0563	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	5/23/2007	Non-Mall
537	KIRK	Joedy Davis	KH24	LINDA DEROSE	MANDY SOUTHERLAND	Lake Worth Marketplace	6046 Azle Avenue, Suite 300	Lake Worth	TX	76135	817-237-4870	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	2/28/2007	Non-Mall
538	KIRK	Joedy Davis	KH26	Geneve Ponson	Cheryl Stephens	Columbus Park Crossing So	5550 Whittlesey Blvd., Suite 880	Columbus	GA	31909	706-641-8910	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	3/27/2007	Non-Mall
540	KIRK	Joedy Davis	KH21	LINDA DEROSE	Minerva Castillo	Baybrook Square	1375 W Bay Area Boulevard	Webster	TX	77598	281-332-9817	10am-8pm	10am-9pm	10am-9pm	11am-7pm	CST	5/23/2007	Non-Mall

Store List

Intranet **Version 8.4.24**

Store Count: 325

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618	KIRK	Joedy Davis	KH14	Erick Bode	Mackinley Eckardt	The Crossings of Spring Hill	1035 Crossings Boulevard	Spring Hill	TN	37174	931-486-3180	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	11/17/2010	Non-Mall
619	KIRK	Joedy Davis	KH22	Anthony Ortega	Rossana De La Riva	Villaggio Retail Center	7891 N. Blackstone Avenue	Fresno	CA	93720	559-431-4053	10am-7pm	10am-8pm	10am-8pm	11am-6pm	PST	11/24/2010	Non-Mall
622	KIRK	Joedy Davis	KH18	Carolyn Needham	Emily Spangler	Beaver Creek Crossings	1591 Beaver Creek Commons Drive	Apex	NC	27502	919-303-3391	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	12/15/2010	Non-Mall
625	KIRK	Joedy Davis	KH11	Liana Turner	KRISTY SMITH	The Avenue West Cobb	3625 Dallas Highway SW, Suite 200	Marietta	GA	30064	678-354-0183	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	3/6/2011	Non-Mall
626	KIRK	Joedy Davis	KH14	Erick Bode	CHRISTINA ARGUELLO	Glenbrook Shopping Centre	1016 Glenbrook Way	Hendersonville	TN	37075	615-824-3377	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	4/30/2011	Non-Mall
627	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Laura Shisler	Brandywine Town Center	1052 Brandywine Parkway	Wilmington	DE	19803	302-477-1580	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	6/22/2011	Non-Mall
629	KIRK	Joedy Davis	KH10	Wendy Scott	Shannon Foley	Lady Lake Crossing	496 North US Highway 27	Lady Lake	FL	32159	352-205-7195	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	6/22/2011	Non-Mall

Store List

Intranet **Version 8.4.24**

Store Count: 325

Store	Region	Regional Director	District	District Manager	Store Manager	Mall	Address	City	State	Zip
630	KIRK	Joedy Davis	KH24	LINDA DEROSE	ROBYN BURRIS	Firewheel Town Center	355 Town Center Boulevard	Garland	TX	75040
631	KIRK	Joedy Davis	KH21	LINDA DEROSE	Laura Rojas	McAllen Pavilion	406 E Expressway 83	McAllen	TX	78503
632	KIRK	Joedy Davis	KH26	Geneve Ponson	DeRanda Giachetti	Shoppes at Paradise Key	4429 Commons Drive East, D-2	Destin	FL	32541
633	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Jaime Franklin	Greenwood Shopping Center	8928 US 31 South	Indianapolis	IN	46227
634	KIRK	Joedy Davis	KH10	Wendy Scott	Nichole Rothwell	Vista Plaza	2524 NW Federal Highway	Stuart	FL	34994
635	KIRK	Joedy Davis	KH18	Carolyn Needham	KIM LONG	Towne Square	1383 Towne Square Blvd. NW	Roanoke	VA	24012
636	KIRK	Joedy Davis	KH14	Erick Bode	Jennifer Hyden	Cool Springs Pointe	1624 Galleria Boulevard	Brentwood	TN	37027
637	KIRK	Joedy Davis	KH25	Geoff Haun	Tabitha Pryor, TSM	NewMarket Square	2441 North Maize Road	Wichita	KS	67205
638	KIRK	Joedy Davis	KH26	Geneve Ponson	David Crowe	The Promenade	3921 Promenade Pkwy	D'Iberville	MS	39540
639	KIRK	Joedy Davis	KH21	LINDA DEROSE	Stephanie Patrick	North Park Plaza	5874 Eastex Freeway	Beaumont	TX	77708
640	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Shelby Shots	Evansville Pavilion	6501 East Lloyd Expressway #7	Evansville	IN	47715
641	KIRK	Joedy Davis	KH17	Jeremy Salazar	KELLI SNEAD	Oglethorpe Mall	7804 Abercorn Street, Suite 60	Savannah	GA	31406
642	KIRK	Joedy Davis	KH11	Liana Turner	Alana Van Valkenburg	Lakeshore Marketplace	850 Dawsonville Highway	Gainesville	GA	30501
643	KIRK	Joedy Davis	KH11	Liana Turner	Christine McAndrews	Mill Creek Station	3310 Buford Drive, Suite 10	Buford	GA	30519
646	KIRK	Joedy Davis	KH10	Wendy Scott	Marian D'Angelo	Northwoods Center	1269 Bruce B. Downs Boulevard	Wesley Chapel	FL	33544
648	KIRK	Joedy Davis	KH19	Stacy Davis	EMILY HARWELL	University Town Center	1544 24th Avenue NW	Norman	OK	73069
650	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Gary Hess	Market Square	720 Jefferson Road, Suite 500	Rochester	NY	14623
651	KIRK	Joedy Davis	KH22	Anthony Ortega	Sherri Rouse	Palladio Center	260 Palladio Parkway, Suite 1019	Folsom	CA	95630
652	KIRK	Joedy Davis	KH10	Wendy Scott	N/A	The Markets at Town Center	4870 Big Island Drive, Suite 6	Jacksonville	FL	32246
655	KIRK	Joedy Davis	KH22	Anthony Ortega	Amy Matero	Nut Tree Retail Center	1641 E. Monte Vista Avenue, Suite I-1	Vacaville	CA	95688
656	KIRK	Joedy Davis	KH17	Jeremy Salazar	Sarah McGwier	Augusta Exchange	259 Robert C. Daniels Jr Parkway	Augusta	GA	30909
657	KIRK	Joedy Davis	KH19	Stacy Davis	Donna Williams	Lakewood Village	2639 Lakewood Village Dr.	Little Rock	AR	72116
659	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Andrea Wcislek, MM	Crossroads Center	9830 Olde, US-20	Perrysburg	OH	43551
661	KIRK	Joedy Davis	KH11	Liana Turner	N/A	The Shoppes at River Crossi	5080 Riverside Drive, Suite 500	Macon	GA	31210
662	KIRK	Joedy Davis	KH10	Wendy Scott	Anna Bechtel	Mandarin Landing	10601 San Jose Blvd Suite 104	Jacksonville	FL	32257
663	KIRK	Joedy Davis	KH10	Wendy Scott	Robin Stupp	The Shoppes at University P	8245 Cooper Creek Blvd	Bradenton	FL	34201
664	KIRK	Joedy Davis	KH26	Geneve Ponson	Brittney Pevehouse	Pecanland Center	4429 Pecanland Mall Rd, Suite 9	Monroe	LA	71203
665	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Hilda Martinez	Antelope Valley Mall	1247 Rancho Vista Blvd. "B"	Palmdale	CA	93551
667	KIRK	Joedy Davis	KH11	Liana Turner	Ashley Blair	Valdosta Mall Corner	964 A North St Augustine Rd	Valdosta	GA	31601
668	KIRK	Joedy Davis	KH21	LINDA DEROSE	Ann Berry	Silverlake Village	3143 Silverlake Village Dr., Unit # 16	Pearland	TX	77584
669	KIRK	Joedy Davis	KH25	Geoff Haun	Tom Coleman	L Street Marketplace	12226 K Plaza, Suite 101	Omaha	NE	68137
670	KIRK	Joedy Davis	KH11	Liana Turner	KRISTIE BEALMEAR	Barrow Crossing	916 Loganville Highway, Suite 800	Bethlehem	GA	30620
671	KIRK	Joedy Davis	KH21	LINDA DEROSE	Rosario Lopez	Fairway Marketplace	5566 Fairmont Parkway	Pasadena	TX	77505
672	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Claudia Garcia	Chimney Rock	6341 East Highway 191	Odessa	TX	79762
673	KIRK	Joedy Davis	KH21	LINDA DEROSE	Misty Guerrero	Victoria Crossing	7906 NE Zac Lentz Parkway	Victoria	TX	77904
675	KIRK	Joedy Davis	KH22	Anthony Ortega	Khalelah Wilson	Pacheco Pass	950 Renz Lane, Suite 50	Gilroy	CA	95020
677	KIRK	Joedy Davis	KH25	Geoff Haun	Kathryn Dillon	Summitwoods Crossing	1660 NW Chipman Rd.	Lees Summit	MO	64081
678	KIRK	Joedy Davis	KH14	Erick Bode	Jazyme Nixon	Jonesboro Highlands	3101 E. Highland Dr.	Jonesboro	AR	72401
680	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Christina Kennedy	Indian Ridge Plaza	5912 Grape Road, Unit 1024	Mishawaka	IN	46545
682	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Lisa Brown	Louis Joliet Pointe	2856 Plainfield Rd.	Joliet	IL	60435
683	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Casey Hess	Lafayette Pavilion	100 S Creasy Ln#1330	Lafayette	IN	47905
684	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	CORINNE HOLOBINKO	Watchung Square Mall	1515 Route 22 West, Suite 39	Watchung	NJ	7069
685	KIRK	Joedy Davis	KH21	LINDA DEROSE	Jennifer Austin, TSM	Woodridge Plaza	27842 Interstate 45 North	The Woodlands	TX	77385
687	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Christine Olson	Wrangleboro Consumer Squ	2300 Consumer Square, Suite 280	Mays Landing	NJ	08330
688	KIRK	Joedy Davis	KH10	Wendy Scott	April Todd	Cobblestone Village	400 CBL Dr., Suite 104	St. Augustine	FL	32086
690	KIRK	Joedy Davis	KH17	Jeremy Salazar	Paige Turner	Ross Plaza Shopping Center	1834 Matthews Township Pkwy, Unit 4	Matthews	NC	28105
691	KIRK	Joedy Davis	KH17	Jeremy Salazar	Tricia Hutton	0	6 Van Campen Blvd.	Wilmington	NC	28403
692	KIRK	Joedy Davis	KH17	Jeremy Salazar	Angela Strickland	Westgate Crossing	660 Spartan Blvd.	Spartanburg	SC	29301

693	KIRK	Joedy Davis	KH25	Geoff Haun	Terry Butts	Olathe Station	15325 W. 119th St.	Olathe	KS	66062	913-764-1831	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	12/1/2012	Non-Mall
694	KIRK	Joedy Davis	KH21	LINDA DEROSE	Beth Farrow	Cypresswood Court	19507 Interstate 45 North, Suite 940	Spring	TX	77388	281-528-9218	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	11/21/2012	Non-Mall
696	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Jessica Chmielewski	Bel Air Plaza Shopping Cent	569 Baltimore Pike	Bel Air	MD	21014	410-838-0297	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	12/8/2012	Non-Mall
697	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Kristin Sather	Fargo Plaza	4427 13th Avenue South	Fargo	ND	58103	701-282-9420	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	12/8/2012	Non-Mall
699	KIRK	Joedy Davis	KH25	Geoff Haun	Jill Loomis	Independence Center	18813 E 39th Street South, Suite 2144	Independence	MO	64057	816-795-6424	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	4/2/2013	Mall
707	KIRK	Joedy Davis	KH11	Liana Turner	KAREN RHINO	Commerce II Outlet	800 Steven B Tanger Blvd, Suite 1103	Commerce	GA	30529	706-423-9720	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	1/18/2000	Non-Mall
715	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Devin Bowers-Kropp	Prime Outlet at Grove City	1911 Leesburg, Grove City Road, Sp.	Grove City	PA	16127	724-748-4626	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	11/14/2002	Non-Mall

Store List

Intranet **Version 8.4.24**

Store Count: 325

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894	KIRK	Joedy Davis	KH24	LINDA DEROSE	Geoff Jansen	Walden Park	10900 Lakeline Mall Drive, Suite 100	Austin	TX	78717	512-249-9663	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	1/30/2015	Non-Mall
897	KIRK	Joedy Davis	KH18	Carolyn Needham	Jesse Pettersen	Village at Swift Creek	13343 Rittenhouse Drive	Midlothian	VA	23112	804-744-3647	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	1/27/2015	Non-Mall
899	KIRK	Joedy Davis	KH17	Jeremy Salazar	LECLAIRE LAWHON	The Pinnacle	462 Pinnacle Parkway	Bristol	TN	37620	423-652-2010	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	3/10/2015	Non-Mall
922	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Daisy Velez	Rockaway Commons	343 Mount Hope Ave, Suite 508	Rockaway	NJ	7866	973-366-1734	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	6/9/2015	Non-Mall
923	KIRK	Joedy Davis	KH20	Jennifer Gebbie	Dawn Sanchez	Chino Spectrum Marketplace	4042 Grand Ave.	Chino	CA	91710	909-590-2548	10am-7pm	10am-8pm	10am-8pm	11am-6pm	PST	7/7/2015	Non-Mall
924	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Kaitlin Gudding	Hall Road Crossing	13943 Hall Road	Shelby Townshi	MI	48315	586-566-0040	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	8/1/2015	Non-Mall
925	KIRK	Joedy Davis	KH21	LINDA DEROSE	Anne Hansen	Baytown Plaza	6540 Garth Road	Baytown	TX	77521	281-421-1837	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	7/21/2015	Non-Mall

Store List

Intranet **Version 8.4.24**

Store Count: 325

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993	KIRK	Joedy Davis	KH17	Jeremy Salazar	Levi Billings	Mooresville Retail Center	481 River Hwy	Mooresville	NC	28117	704-660-7754	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	9/20/2016	Non-Mall
995	KIRK	Joedy Davis	KH17	Jeremy Salazar	Jessica Vanness, MM	Sayebrook Town Center	170 Sayebrook Parkway	Myrtle Beach	SC	29588	843-293-7570	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	9/20/2016	Non-Mall
997	KIRK	Joedy Davis	KH21	LINDA DEROSE	Twilla Moses	Shoppes at Park West	24600 Katy Fwy Suite 400	Katy	TX	77494	281-665-1836	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	8/30/2016	Non-Mall
1005	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Danielle Baumgartner	Hay Creek Shops	1409 East LaSalle Dr.	Bismarck	ND	58503	701-250-8834	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/18/2016	Non-Mall
1006	KIRK	Joedy Davis	KH10	Wendy Scott	Jivka Lambeva	Seminole City Center	7957 113th St. North	Seminole	FL	33772	727-319-0334	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	10/25/2016	Non-Mall
1007	KIRK	Joedy Davis	KH11	Liana Turner	Stacy McGriff	South Point	217 South Point Blvd.	McDonough	GA	30253	770-954-0250	10am-7pm	10am-8pm	10am-8pm	11am-6pm	EST	10/18/2016	Non-Mall
1008	KIRK	Joedy Davis	KH26	Geneve Ponson	Catherine Crook, TSM	Forum at Grandview	179 Grandview Blvd., Suite 960	Madison	MS	39110	601-605-6343	10am-7pm	10am-8pm	10am-8pm	11am-6pm	CST	10/27/2016	Non-Mall

Store List

Intranet **Version 8.4.24**

Store Count: 325

Store	Region	Regional Director	District	District Manager	Store Manager	Mall	Address	City	State	Zi
1009	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Stacy Miller	The Venue at Belden	3927 Everhard Rd. NW	North Canton	OH	447
1010	KIRK	Joedy Davis	KH21	LINDA DEROSE	GRACIE SANCHEZ	Fairfield Town Center	28634 Highway 290, Suite E05	Cypress	TX	774
1011	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	ANGE EVANS	Marlton Crossing	101 Route 73 South, #159	Marlton	NJ	80
1012	KIRK	Joedy Davis	KH10	Wendy Scott	Patricia Pita Martinez	Westchester Shopping Cente	8571 SW 24th St	Miami	FL	331
1013	KIRK	Joedy Davis	KH25	Geoff Haun	Aurora Barrera	Liberty Commons	241 South Stewart Rd.	Liberty	MO	640
1014	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Staci Puleo	Finley Square Center	1552 Butterfield Road	Downer's Grove	IL	605
1015	KIRK	Joedy Davis	KH11	Liana Turner	Val Daughtry	Heritage Pavilion	2540 Cumberland Blve., Suite 8A	Smyrna	GA	300
1016	KIRK	Joedy Davis	KH11	Liana Turner	Kelly Martin	Dawson Marketplace	136 Marketplace Parkway, Suite 800	Dawsonville	GA	305
1017	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Elizabeth Evers	84 South	8490 West Sura Lane	Greenfield	WI	532
1019	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Gina Friedel	Goucher Commons	803 Goucher Boulevard, Suite 101	Towson	MD	212
1020	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Dianne Silva	Brick Commons	744 NJ Highway 70 W	Brick	NJ	087
1021	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Kim Swanson, TSM	Christiana Fashion Center	3150 Fashion Center Blvd.	Newark	DE	197
1024	KIRK	Joedy Davis	KH17	Jeremy Salazar	Daniel Elmore, MM	Magnolia Park	1025 Woodruff Road, Suite G102	Greenville	SC	296
1025	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	JACLYN GRAY	Rivertree Court	701 North Milwaukee Ave., Suite 200	Vernon Hills	IL	600
1026	KIRK	Joedy Davis	KH14	Erick Bode	Caitlin Keenan	One Bellevue Place	8167 Sawyer Brown Road, Space A9	Nashville	TN	372
1027	KIRK	Joedy Davis	KH18	Carolyn Needham	Michelle Whitecotton	Central Park Marketplace	1767 Carl D. Silver Parkway	Fredericksburg	VA	224
1028	KIRK	Joedy Davis	KH26	Geneve Ponson	Bridgette Strother	Eastchase Central	7690 Eastchase Parkway	Montgomery	AL	361
1029	KIRK	Joedy Davis	KH10	Wendy Scott	Sandra Shannon	Park Shore Plaza	4369 Tamiami Trail N.	Naples	FL	341
1031	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Jasemin Al-Any	Annex of Arlington Heights	15 W. Rand Road	Arlington Height	IL	600
1033	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Kodi Nardone	Maple Village Shopping Cent	341 N. Maple Road	Ann Arbor	MI	481
1035	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Marshall O'Hara	Gateway Shopping Center	221 Swedesford Road, Space 183	Wayne	PA	190
1036	KIRK	Joedy Davis	KH18	Carolyn Needham	N/A	Renaissance Village	8200 Renaissance Parkway	Durham	NC	277
1037	KIRK	Joedy Davis	KH17	Jeremy Salazar	Heather Jordan	Anderson Station	166 Station Drive	Anderson	SC	296
1040	KIRK	Joedy Davis	KH14	Erick Bode	Colby McGee	Gallina Centro	3555 S. Houston Levee Road	Collierville	TN	380
1042	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Lisa Tanner, ISM	Gateway Commons	2620 Calumet Trace	Owensboro	KY	423
1044	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Desiree Gillespie	The Court a Deptford II	1500 Almonesson Road, Space 13	Deptford Towns	NJ	080
1045	KIRK	Joedy Davis	KH24	LINDA DEROSE	Victoria Estrada	Gates of Prosper	1011 S. Preston Road	Prosper	TX	750
1046	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Angie Dey	Shoppes at Lake Lorraine	2250 S. Lorraine Place	Sioux Falls	SD	571
1047	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Nick Carey	North Dover Center	1033 N. Dupont Highway	Dover	DE	199
1048	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Nicole Fetchin	Cranberry Mall	20111 Route 19, Space 106	Cranberry Town	PA	160
1049	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Kristie Cormack	Paxton Towne Center	5125 Jonestown Road, Suite 515	Harrisburg	PA	171
1051	KIRK	Joedy Davis	KH16	Lori Simonds-Smith	Fenda Telfort	Rockland Center	55 Rockland Center	Nanuet	NY	109
1052	KIRK	Joedy Davis	KH15	Kathleen Longnecker	Cynthia Smith	West Bay Plaza	30012 Detroit Rd, Suite 230	Westlake	OH	441
1053	KIRK	Joedy Davis	KH17	Jeremy Salazar	Christian Moore	Promenade at Carolina Rese	7796 Charlotte Highway #112	Indian Land	SC	297
1054	KIRK	Joedy Davis	KH10	Wendy Scott	Phil Centonze	Sunset Point 19	23668 US Highway 19N, Unit #30	Clearwater	FL	337
1055	KIRK	Joedy Davis	KH14	Erick Bode	DALTON HAMMER	Maryville Commons	732 Watkins Rd.	Maryville	TN	378
1056	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Sarah Valandra	Sun Center	3656 W. Dublin Granville Road	Columbus	OH	432
1057	KIRK	Joedy Davis	KH11	Liana Turner	Jessica Lockwood, MM	Homestead Village	5474 Patrick Way	Birmingham	AL	352
1062	KIRK	Joedy Davis	KH22	Anthony Ortega	Ginette Gagen	Shops at Livermore	3056 West Jack London Blvd.	Livermore	CA	945
1063	KIRK	Joedy Davis	KH17	Jeremy Salazar	Mallery King	Shops at Livermore	211 Golden Isles Plaza	Brunswick	GA	315
1064	KIRK	Joedy Davis	KH18	Carolyn Needham	Amy Kuba	Winchester Station	2570 S. Pleasant Valley Rd.	Winchester	VA	226
1065	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Shereen Bartley, TSM	Middletown Commons	13401 Shelbyville Rd., Suite 116	Louisville	KY	402
1066	KIRK	Joedy Davis	KH23	ARIANNA CONTRERA	Susana Daniels	Golden Hill Shopping Center	2232 3rd Avenue SE	Rochester	MN	559
1067	KIRK	Joedy Davis	KH18	Carolyn Needham	Nathanial Bibee	New River Valley Mall	782 New River Road, Space 604	Christiansburg	VA	240
1068	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Meaghan Kaminsky	The Shoppes at Whitestown	6140 Mills Drive, Suite 700	Whitestown	IN	460
1069	KIRK	Joedy Davis	KH25	Geoff Haun	Shellie Aden	Glen Hollow Shopping Cente	5001 N. Big Hollow Road	Peoria	IL	616
1071	KIRK	Joedy Davis	KH25	Geoff Haun	Maddie Maher	Elmore Marketplace	4235 Elmore Avenue	Davenport	IA	528
1072	KIRK	Joedy Davis	KH18	Carolyn Needham	Danielle Scott	Hanes Point Shopping Cente	1026 Hanes Mall BLVD	Winston-Salem	NC	271

1074	KIRK	Joedy Davis	KH12	CARRIE LAMBERT	Amanda Cogar	Marketplace at Saxony	14120 Brooks School Rd. Suite # 160	Noblesville	IN	46060	463-238-1342	10am-7pm	10am-8pm	10am-9pm	11am-6pm	EST	4/19/2021	Non-Mall
1075	KIRK	Joedy Davis	KH25	Geoff Haun	Tom Pryor	The Streets at Southglenn	6955 S. York Street, #B4-401	Centennial	CO	80122	719-402-1945	10am-7pm	10am-8pm	10am-8pm	11am-6pm	MST	2/9/2024	Non-Mall

INSURANCE

See attachment to Schedule 5.10.

Carrier	Amount	Policy Number	Policy Type
Safety National Casualty Corporation	Statutory Limit $1,000,000 Employers Liability	LDC4054534	Workers Compensation
Safety National Casualty Corporation	$1,000,000 Per Occurrence $2,000,000 General Aggregate	GL6676184	General Liability
Safety National Casualty Corporation	$1,000,000 Single Limit	CA 6675524	Commercial Auto
Great American	$10,000,000 Limit	UMB 4370082	Commercial Umbrella
Travelers Indemnity Co.	Varying Deductibles $1,000,000 Limit (See attachment to schedule for limits.)	KTJCMB0J73168923	Property
AIG World Risk	$1,000,000 Per Occurrence $2,000,000 General Aggregate	WS11014407	Foreign Package
Zurich American Insurance Company	- $5,000,000 Limit	SPR052997902	Cyber
AXA XL Specialty Insurance	$5,000,000 Aggregate Excess	MTE904426102	Cyber
Zurich American Insurance Companv	$10,000,000 Combined Single Limit	NSL1138018-02	Texas Non-Subscription
Evanston	$5,000,000 Excess $10,000,000	XCB3147	Excess Texas Non-Subscription
XL	$1,000,000 Limit	ELU184190-23	Crime
Hiscox	$3,000,000 Limit, per insured event	UKA301104222	Special Crime
CNA	$5,000,000 Aggregate	752286802	Employment Practices Liability
XL	$5,000,000 Aggregate	ELU191536-23	Primary D & 0
RSUI Indemnitv Comoanv	$5,000,000 Aggregate Excess $5,000,000	HS706261	Excess D & 0
Hartford	$5,000,000 Aggregate Excess $10,000,000	20DA 0396905-23	Excess D & 0
Berklev Professional	$5,000,000 Aggregate Excess $15,000,000	BPR08096311	Side A
Westchester Fire	$5,000,000 Aggregate Excess $20,000,000	BPR08096311	Side A

AWAC	$5,000,000 Aggregate Excess $25,000,000	0312-4328	Side A
XL	$3,000,000 Aggregate	ELU191537-23	Fiduciary
Continental Ins. Co.	$5,000,000 limit per any conveyance	OC7300504	Inland Marine/Cargo
Arch	$1,000,000 Limit	LAAUTO052600	Enterprise Fleet
Reliastar (Voya)	$250,000	0073070-0	Stop Loss
New York Life	$10,000	LK964705	Long Term Disability
New York Life	$100,000	FLX966851	Basic Life Insurance-Employee
New York Life	$2,000	FLX966851	Basic Life Insurance-Dependent
New York Life	$100,000	$OK968357	Basic AD & D Insurance-Employee

Schedule 5.13

PART A SUBSIDIARIES

Kirkland's Stores, Inc.

Legal Name:	Jurisdiction of Incorporation	Authorized Equity Interests
Kirkland's Stores, Inc.	Tennessee	1,000 shares outstanding

Kirkland's Texas, LLC

Legal Name:	Jurisdiction of Formation	Authorized Equity Interests
Kirkland's Texas, LLC	Tennessee	Membership Interests

Kirkland's DC, Inc.

Legal Name:	Jurisdiction of Incorporation	Authorized Equity Interests
Kirkland's DC, Inc.	Tennessee	1,000 shares outstanding

PART B
OTHER EQUITY INVESTMENTS

None.

PART C
EQUITY INTERESTS IN THE LOAN PARTIES

See Part A of Schedule 5.13 for stock ownership information concerning the Subsidiaries.

The stock of Kirkland's, Inc. is publicly traded on Nasdaq under the symbol KIRK, and as of August 29, 2024 there were 13,111,638 shares of common stock, no par value, outstanding (which is Kirkland's only class of outstanding stock). As of the date hereof, there are no holders owning 10% or more of the voting stock or other interests of Kirkland's, Inc.

Schedule 5.18

COLLECTIVE BARGAINING AGREEMENTS

None.

Schedule 5.21(a)

DEMAND DEPOSIT ACCOUNTS

See Attachment to Schedule 5.21(a)

Schedule 8.10

Account Name	Bank	Account #	Entity	FEIN#	Blocked Account	Number of Stores Depositing	Contact	Address
Concentration Acct	Bank of America	003255427264	Kirkland's Inc.	62-1287151	Blocked Account	N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Tax Acct	Bank of America	003261228649	Kirkland's Inc.	62-1287151		N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Operating Acct	Bank of America	003284737097	Kirkland's Inc.	62-1287151		N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Accounts Payable	Bank of America	003299838930	Kirkland's Inc.	62-1287151		N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
A/P Wire Acct	Bank of America	003282512740	Kirkland's Inc.	62-1287151		N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Payroll	Bank of America	003299838948	Kirkland's Inc.	62-1287151		N/A	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Store Depository	Bank of America	334037223732	Kirkland's Inc.	62-1287151	Blocked Account	140	Percie Strong Jenkins	3455 Peachtree Rd NE, Atlanta, GA 30326
Store Depository	Wells Fargo	4330961327	Kirkland's Stores Inc.	62-1804982	Blocked Account	90	Trovice Freirson	420 Montgomery St., San Fransico, CA 94104
Store Depository	Regions	332524382	Kirkland's Stores Inc.	62-1804982	Blocked Account	54	Aleshia Palmer	150 4th Avenue North, Nashville, TN 37219
Store Depository	Fifth Third	07362739513	Kirkland's Stores Inc.	62-1804982	Blocked Account	17	Sherri Bevis	38 Fountain Square Plaza, Cincinnati, OH 45263
Store Depository	US Bank	153912168876	Kirkland's Stores Inc.	62-1804982		12	Lynn Meola	800 Nicolett Mall, Minneapolis, MN 55402
Store Depository	Truist	1430004672036	Kirkland's Stores Inc.	62-1804982		6	Rebecca Coffman	214 North Tryon Street, Charlotte, NC 28202
Store Depository	Citizens Bank	1403392665	Kirkland's Stores Inc.	62-1804982		5	Luke Boan	100 N Main St., Providence, RI 02903
Store Depository	The Cecilian Bank	300481019	Kirkland's Stores Inc.	62-1804982		1	Hayley Reed	227 West Dixie Ave., Elizabethtown, KY 42701

CREDIT CARD CLEARINGHOUSES AND PROCESSORS

Schedule 5.21 (b)

- FiServ – processing of all Visa and MasterCard credit and debit transactions, Discover transactions, American Express online transactions only, and all Kirkland's gift card transactions. Original Authorization, Settlement and Payment Merchant Agreement dated January 8, 2002, with First Data Merchant Services LLC as Provider. Amended and supplemented multiple times including amended on June 27, 2011 with Citicorp Credit Services, Inc. as Bank, last amended on January 1, 2020 for a 5 year term; thereafter, terminable with a 30 day notice from either party.

- American Express – processing and acceptance of all American Express card products in stores. American Express Card Express Card Acceptance Agreement dated July 1, 2003. Three year term; thereafter, terminable by either party on 90 day notice.

- Wells Fargo – processing and acceptance of the Kirkland's proprietary credit card. Wells Fargo Retail Services Credit Card Retailer Agreement by and between Kirkland's, Inc. d/b/a Kirkland's, Kirkland's Home, Kirkland's Home Outlet, Kirkland's Outlet and Kirkland's.com and Wells Fargo Bank, N.A. dated November 18, 2019 set to expire on December 31, 2024.

- PayPal – processing and acceptance of PayPal payments online. Paypal, Inc. Merchant Agreement dates December 20, 2013, amended on October 17, 2014, by and between Kirkland's, Inc. and PayPal, Inc. Initial one year term; thereafter, terminable by either party on 60 days' notice.

Schedule 5.24

MATERIAL CONTRACTS

1. The Agreement and the other Loan Documents.

2. The ABL Credit Agreement and the other ABL Loan Documents.

3. Amended and Restated Sublease dated September 26, 2003, between Mid-South 431 Smith (TN), LLC (successor to Exeter 431 Smith, LLC, successor to PCO Smith Lane, L.P., successor to Lexington Jackson LLC), as Landlord and Kirkland's, Inc. as Tenant. This is lease is for the Company's primary distribution center building in Jackson, TN and the lease will expire on December 31, 2029. Kirkland's has four five-year extension periods to this Lease (running through December of 2049).

4. Authorization, Settlement and Payment Merchant Agreement among CTS Holdings, LLC, Citicorp Payment Services, Inc., and Kirkland's, Inc. dated January 8, 2002. Amended by Amendment No. 8 on January 22, 2015, and now set to expire on January 22, 2018.

5. American Express Card Express Card Acceptance Agreement dated July 1, 2003. Three year term; thereafter, terminable by either party on 90 days notice.

6. Commercial Account Form and Letter of Agency – POTS entered into on June 10, 2016, amended on October 21, 2016 for wide-area-network provider Granite Telecommunications, LLC.

7. Office Lease dated April 17, 2014, amended on December 21, 2023, by and between Highwoods Realty Limited Partnership, as Landlord, and Kirkland's, Inc., as Tenant. This lease runs through January 30, 2030, with one five-year extension period.

8. Logistics Services Agreement, by and between Kirkland's, Inc. and National Distribution Centers, LLC dated March 22, 2019 for 3PL distribution center in Lancaster, Texas.

9. Distribution Services Agreement, by and between Damco Distribution Services, Inc. and Kirkland's, Inc. dated February 1, 2016, as amended, for cross docking and bypass services in Santa Fe Springs, California.

10. Master Services Agreement dated September 24, 2021 with Amperity, Inc. for analysis of Customer Data and Customer Behavioral Records, and related annual orders under the MSA.

11. Master Services Agreement dated June 30, 2008 with PDI (formerly Cybera, Inc.) for network security, and related SOWs.

12. SaaS Subscription and Services Agreement dated November 22, 2016, with Listrak, Inc. for marketing emails and SMS text messages, and related orders under the Agreement.

13. Master Services Agreement dated October 15, 2017 with CloudHesive LLC for AWS web hosting and managed services, and related SOWs under such MSA.

Schedule 6.02

FINANCIAL AND COLLATERAL REPORTING

Kirkland's, Inc.
Financial Reporting Requirements

30 days after month end per Section 6.01 (b)[1]

- Compliance Certificate
- Consolidated balance sheet of the Parent and its Subsidiaries
- Consolidated statements of income or operations, Shareholders' Equity and cash flows
- detailed calculation of Consolidated EBITDA
- a copy of management's discussion and analysis with respect to such financial statements

Quarterly (45 days after quarter end) per Section 6.01(b)

- Compliance Certificate
- Consolidated balance sheet of the Parent and its Subsidiaries
- Consolidated statements of income or operations, Shareholders' Equity and cash flows
- detailed calculation of Consolidated EBITDA
- a copy of management's discussion and analysis with respect to such financial statements

Annual (90 days after fiscal year end) per Section 6.01(a)

- Compliance Certificate
- audited Consolidated balance sheet of the Parent and its Subsidiaries
- audited Consolidated statements of income or operations, Shareholders' Equity and cash flows
- a copy of management's discussion and analysis with respect to such financial statements

Annual (30 days after fiscal year end) per Section 6.01(c)

- forecast of the Consolidated balance sheets and statements of income or operations and cashflows of the Parent and its Subsidiaries on a monthly basis for the immediately following Fiscal Year and as soon as available, any significant revisions to such forecasts with respect to such fiscal year

1 Unless an Accelerated Borrowing Base Delivery Event (as defined in the ABL Credit Agreement) has occurred and is continuing, in which event on the Thursday of each week.

Schedule 6.19

POST-CLOSING OBLIGATIONS

1. No later than the date that is sixty (60) Business Days after the Closing Date, the Loan Parties shall to deliver or cause to be delivered to the Administrative Agent duly executed Collateral Access Agreement for that certain real property located at 1901 Danieldale Road in Lancaster, Texas, in substantially the same form and substance as such Collateral Access Agreement (as defined in the ABL Credit Agreement) in effect on the Closing Date in favor of the ABL Agent.

2. No later than the date that is sixty (60) Business Days after the Closing Date, the Loan Parties shall deliver Account Control Agreements with respect to those DDAs maintained with each of Bank of America, N.A., Wells Fargo Bank, National Association and Fifth Third Bank, National Association, in each case, in substantially the same form and substance as such Deposit Account Control Agreements in effect on the Closing Date in favor of the ABL Lender.

3. No later than the date that is fifteen (15) Business Days after the Closing Date, the Agent shall receive endorsements to the insurance policies naming the Agent as lender's loss payable or additional insured, as applicable, and providing for 30 days' notice of cancellation thereunder (or 10 days in the case of cancellation for non-payment).

4. No later than the date that is ten (10) Business Days after the Closing Date, the Loan Parties shall provide evidence to the Administrative Agent that the stock certificates representing the Equity Interests of each of Kirkland's Stores, Inc. and Kirkland's DC, Inc. and related blank endorsements have been delivered to the ABL Agent.

EXISTING LIENS

None.

EXISTING INVESTMENTS

None.

Schedule 7.03

EXISTING INDEBTEDNESS

1. Direct Debt

None of the Company or any Subsidiary has any direct debt other than the debt to Administrative Agent and Lenders under this Agreement, the debt to the ABL Agent under the ABL Facility and other Permitted Indebtedness.

2. Guarantees

Other than the guarantee provided by the Parent under this Agreement and the other Loan Documents and the ABL Credit Facility, the Parent has guaranteed some of the store lease obligations (rent payment, maintenance obligations, etc.) of Kirkland's Stores, Inc. and Kirkland's Texas, LLC. Currently, none of the Subsidiaries provides any guarantees other than the guarantee provided by Kirkland's DC, Inc. under this Agreement and the ABL Credit Facility.

AGENT'S OFFICE; CERTAIN ADDRESSES FOR NOTICES

Agent
Beyond, Inc.
799 W. Coliseum Way Midvale, UT 84047
Attn: E. Glen Nickle, Chief Legal Officer Telephone: (801) 947-3100
E-mail: gnickle@beyond.com

With a copy to:

Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611 Attn: Noah Weiss
Telephone: (312) 876-7700 E-mail: noah.weiss@lw.com

The Lead Borrower and the Other Loan Parties
c/o Kirkland's Stores, Inc.
5310 Maryland Way
Brentwood, TN 37027 Attention: Mike Madden Telephone: (615) 872-4991
E-Mail: mike.madden@kirklands.com

with a copy to:

Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Attention: Felix R. Dowsley, III Telephone: (615) 742-6228
E-mail: fdowsley@bassberry.com

EXHIBIT A

Form of Notice of Borrowing/Continuation/Conversion NOTICE OF BORROWING/CONTINUATION/CONVERSION

Date: __, __

To: Beyond, Inc., as Agent Ladies and Gentlemen:

Reference is made to that certain Term Loan Credit Agreement, dated as of October 21, 2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the other Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement.

[The Lead Borrower hereby requests a [Closing Date Non-Convertible Term Loan] [Convertible Term Loan] :

1. On (a Business Day)1

2. In the amount of $__

3. Comprised of (Type of Loan)2

4. With an Interest Period of months3]4

---

1 Each notice of borrowing must be received by Agent no later than 11:00 a.m. five (5) Business Days prior to the requested date of any borrowing (or such later date as agreed by the Agent in its discretion).

2 Closing Date Non-Convertible Term Loans and Convertible Term Loans may be either Base Rate Loans or Term SOFR Loans. If the Type of Loan is not specified, then the applicable Loans will be made as or converted to Base Rate Loans.

3 The Lead Borrower may request a borrowing of Term SOFR Loans with an Interest Period of one (1), three
(3) or six (6) months. If no election of Interest Period is specified, then the Lead Borrower will be deemed to have specified an Interest Period of one (1) month.

4 Applicable to the Closing Date borrowings.

[The Lead Borrower hereby requests a [conversion of Loans from one Type to the other] [continuation of Term SOFR Loans:]

1. On (a Business Day)5

2. Loan to be [converted][continued]: 6

3. Type after [conversion][continuation]7

[4. With an Interest Period of months after [conversion][continuation]]8]9

The Lead Borrower hereby represents and warrants that [(a)] [the borrowing of the [Closing Date Non-Convertible Term Loan] [Convertible Term Loan][conversion of Loans from one Type to the other][continuation of Term SOFR Loans] requested herein complies with the provisions of Section 2.02 of the Credit Agreement [and (b) the conditions specified in Sections 4.01 of the Credit Agreement have been satisfied on and as of the date of the applicable requested borrowing].10

5 Each notice of continuation or notice of conversion must be received by Agent no later than 11:00 a.m. three (3) Business Days prior to the requested date of any conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans.

6 To list Non-Convertible Term Loans or Convertible Term Loans.

7 To list SOFR or Base Rate options and applicable Interest Period.

8 Applicable to conversions to Term SOFR Loans or continuation of Term SOFR Loans. Lead Borrower to Request Term SOFR Loans to have an Interest Period of one (1), three (3) or six (6) months. If no election of Interest Period is specified, then the Lead Borrower will be deemed to have specified an Interest Period of one (1) month.

9 Applicable to post-closing conversions/continuations.

10 Only applicable to the Closing Date Borrowings

KIRKLAND'S STORES, INC., as Lead Borrower

By: __ Name: __ Title: __

EXHIBIT B

[Reserved]

EXHIBIT C-1

Form of Non-Convertible Note [Attached]

FORM OF NON-CONVERTIBLE NOTE

Lender: [__] [__], 20[_]

FOR VALUE RECEIVED, the undersigned, KIRKLAND'S STORES, INC., a Tennessee corporation (the "Lead Borrower") and KIRKLAND'S TEXAS, LLC, a Tennessee limited liability company ("Kirkland's Texas" and together with the Lead Borrower, collectively, the "Borrowers"), each hereby jointly and severally promises to pay to the Lender set forth above (the "Lender") all amounts advanced by the Lender as Non-Convertible Term Loans (as defined in the Credit Agreement referred to below) of the Lender made to the Borrowers, payable at such times and in such amounts as are specified in the Credit Agreement.

Each of the Borrowers promises to pay interest on the unpaid principal amount of the Non- Convertible Term Loans advanced by the Lender from the date made until paid in full, payable at such times and at such interest rates as are specified in the Credit Agreement. Demand, diligence, presentment, protest and notice of non-payment and protest are hereby waived by the Borrowers.

This Non-Convertible Note is one of the Notes referred to in, and is entitled to the benefits of, the Term Loan Credit Agreement dated as of October 21, 2024, by and among the Borrowers, the Guarantors (as defined therein) party thereto, Beyond Inc., as Administrative Agent and Collateral Agent and the other Persons party thereto from time to time (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The Credit Agreement, among other things, (a) provides for the making of the Non-Convertible Term Loans by the Lender to the Borrowers in an aggregate principal amount not to exceed at any time the amounts set forth therein, the indebtedness of the Borrowers resulting from such Non-Convertible Term Loans being evidenced by this Non-Convertible Note and (b) contains provisions for acceleration of the maturity of the unpaid principal amount of this Non-Convertible Note upon the happening of certain stated events and also for prepayments on account of the principal hereof prior to the maturity hereof upon the terms and conditions specified therein, all of which provisions are incorporated herein by reference as if fully set forth herein.

This Non-Convertible Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 10.14 (*Governing Law; Jurisdiction; Etc.*) and 10.15 (*Waiver of Jury Trial*) thereof.

This Non-Convertible Note is a registered obligation, transferable only upon notation in the Register, and no assignment hereof shall be effective until recorded therein.

All matters arising out of, in connection with or relating to this Non-Convertible Note, including, without limitation, its validity, interpretation, construction, performance and enforcement (including, without limitation, any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest), shall be construed in accordance with and governed by the laws of the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrowers have caused this Non-Convertible Note to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

KIRKLAND'S STORES, INC.,
as a Borrower

By:__ Name:
Title:

KIRKLAND'S TEXAS, LLC,
as a Borrower

By:__ Name:
Title:

EXHIBIT C-2

Form of Convertible Note [Attached]

FORM OF CONVERTIBLE NOTE

Lender: [__] [__], 20[_]

FOR VALUE RECEIVED, the undersigned, KIRKLAND'S STORES, INC., a Tennessee corporation (the "Lead Borrower") and KIRKLAND'S TEXAS, LLC, a Tennessee limited liability company ("Kirkland's Texas" and together with the Lead Borrower, collectively, the "Borrowers"), each hereby jointly and severally promises to pay to the Lender set forth above (the "Lender") all amounts advanced by the Lender as Convertible Term Loans (as defined in the Credit Agreement referred to below) of the Lender made to the Borrowers, payable at such times and in such amounts as are specified in the Credit Agreement.

Each of the Borrowers promises to pay interest on the unpaid principal amount of the Convertible Term Loans advanced by the Lender from the date made until paid in full, payable at such times and at such interest rates as are specified in the Credit Agreement. Demand, diligence, presentment, protest and notice of non-payment and protest are hereby waived by the Borrowers.

This Convertible Note is one of the Notes referred to in, and is entitled to the benefits of, the Term Loan Credit Agreement dated as of October 21, 2024, by and among the Borrowers, the Guarantors (as defined therein) party thereto, Beyond Inc., as Administrative Agent and Collateral Agent and the other Persons party thereto from time to time (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The Credit Agreement, among other things, (a) provides for the making of the Convertible Term Loans by the Lender to the Borrowers in an aggregate principal amount not to exceed at any time the amounts set forth therein, the indebtedness of the Borrowers resulting from such NConvertible Term Loans being evidenced by this Convertible Note and (b) contains provisions for acceleration of the maturity of the unpaid principal amount of this Convertible Note upon the happening of certain stated events and also for prepayments on account of the principal hereof prior to the maturity hereof upon the terms and conditions specified therein, all of which provisions are incorporated herein by reference as if fully set forth herein.

As more fully set forth in Article XI of the Credit Agreement, the Convertible Term Loans evidenced by this Convertible Note (i) may be converted into shares of common Equity Interests of Kirkland's, Inc., a Tennessee corporation pursuant to the terms and conditions of Section 11.01 of the Credit Agreement and (ii) may be exchanged for Non-Convertible Exchange Term Loans pursuant to the terms and conditions of Section 11.02 of the Credit Agreement.

This Convertible Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 10.14 (*Governing Law; Jurisdiction; Etc.*) and 10.15 (*Waiver of Jury Trial*) thereof.

This Convertible Note is a registered obligation, transferable only upon notation in the Register, and no assignment hereof shall be effective until recorded therein.

All matters arising out of, in connection with or relating to this Convertible Note, including, without limitation, its validity, interpretation, construction, performance and enforcement (including, without limitation, any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest), shall be construed in accordance with and governed by the laws of the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrowers have caused this Convertible Note to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

KIRKLAND'S STORES, INC.,
as a Borrower

By:__ Name:
Title:

KIRKLAND'S TEXAS, LLC,
as a Borrower

By:__ Name:
Title:

EXHIBIT D

Form of Compliance Certificate COMPLIANCE CERTIFICATE

Date of Certificate: __

To: Beyond, Inc., as Administrative Agent Ladies and Gentlemen:

Reference is made to that certain Term Loan Credit Agreement, dated as of October 21, 2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement.

The undersigned, in his capacity as a duly authorized and acting Responsible Officer of the Lead Borrower, hereby certifies on behalf of the Lead Borrower and each of the other Loan Parties as of the date hereof the following:

No Defaults or Events of Default.

1. Since __ (the date of the last Compliance Certificate delivered pursuant to Section 6.02 of the Credit Agreement, or, in the case of the first Compliance Certificate delivered after the Closing Date, the Closing Date), and except as set forth in Appendix I, no Default or Event of Default has occurred.

2. If a Default or Event of Default has occurred since __ (the date of the last Compliance Certificate delivered pursuant to Section 6.02 of the Credit Agreement, or, in the case of the first Compliance Certificate delivered after the Closing Date, the Closing Date), the Loan Parties have taken or propose to take those actions with respect to such Default or Event of Default as described on said Appendix I.

Financial Statements.

[*Use following paragraph (a) for Fiscal Year-end financial statements*]

3. Attached hereto as Appendix II are the audited Consolidated balance sheet of the Parent and its Subsidiaries, as required by Section 6.01(a) of the Credit Agreement for the Fiscal Year ended ___, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, prepared in accordance with GAAP and accompanied by such materials as are required to be delivered pursuant to Section 6.01(a) of the Credit Agreement (all of the foregoing, collectively, the "Annual Financial Statements").

[*Use following paragraph (b) for Fiscal Quarter-end financial statements*]

4. Attached hereto as Appendix II are the Consolidated balance sheet of the Parent and its Subsidiaries, as required by Section 6.01(b) of the Credit Agreement for the Fiscal Quarter ended ___, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Quarter and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) of the Credit Agreement, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail and accompanied by such materials as are required to be delivered pursuant to Section 6.01(b) of the Credit Agreement (all of the foregoing, collectively, the "Quarterly Financial Statements"). The Quarterly Financial Statements were prepared in accordance with GAAP and present fairly the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries, as of the end of the period covered (subject only to normal year-end audit adjustments and the absence of footnotes).

[*Use following paragraph (c) for Fiscal Month-end financial statements*]

5. Attached hereto as Appendix II are the Consolidated balance sheet of the Parent and its Subsidiaries, as required by Section 6.01(b) of the Credit Agreement for the Fiscal Month ended ___, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Month and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) of the Credit Agreement, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail and accompanied by such materials as are required to be delivered pursuant to Section 6.01(b) of the Credit Agreement (all of the foregoing, collectively, the "Monthly Financial Statements"). The Monthly Financial Statements were prepared in accordance with GAAP and present fairly the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries, as of the end of the period covered (subject only to normal year-end audit adjustments and the absence of footnotes).

6. No Material Accounting Changes, Etc. Except as set forth in Appendix III, there has been no change in generally accepted accounting principles used in the preparation of the [Annual Financial Statements] [Quarterly Financial Statements][Monthly Financial Statements] furnished to the Administrative Agent for the [Fiscal Year/Fiscal Quarter /Fiscal Month] ended __. If any such change has occurred, a statement of reconciliation conforming such financial statements to GAAP is attached hereto in Appendix III.

7. Management Discussion. Attached hereto as Appendix IV is a discussion and analysis prepared by management of the Lead Borrower with respect to the [Annual Financial Statements][Quarterly Financial Statements][Monthly Financial Statements] delivered herewith.

[signature page follows]

IN WITNESS WHEREOF, a duly authorized and acting Responsible Officer of the Lead Borrower, on behalf of the Lead Borrower and each of the other Loan Parties, has duly executed this Compliance Certificate as of __, 20_.

LEAD BORROWER: KIRKLAND'S STORES, INC.

By: __ Name: __ Title: __

[Kirklands - Signature Page to Compliance Certificate]

APPENDIX I

Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Loan Parties to be taken on account thereof.]

APPENDIX II

(Financial Statements)

[see attached]

Appendix 2 to Compliance Certificate

APPENDIX III (GAAP)

[see attached]

Appendix 3 to Compliance Certificate

APPENDIX IV

(MD&A)

[see attached]

Appendix 4 to Compliance Certificate

EXHIBIT E ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each]11 Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each]12 Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]13 hereunder are several and not joint.]14 Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and the other Loan Documents to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: __

11 For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.
12 For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.
13 Select as appropriate.
14 Include bracketed language if there are either multiple Assignors or multiple Assignees.

2. Assignee[s]: __

3. Borrowers: Kirkland's Stores, Inc., a Tennessee corporation, as Lead Borrower (the "Lead Borrower") for itself and the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower", and collectively, the "Borrowers").

4. Agent: Beyond, Inc., as administrative agent and collateral agent under the Credit Agreement.

5. Credit Agreement: Term Loan Credit Agreement, dated as of October 21, 2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time), by, among others, (i) the Lead Borrower, (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Agent.

6. Assigned Interest[s]:

Assignor[s]15	Assignee[s]16	Facility Assigned17	Amount of Assignor's [Closing Date Non-Convertible Term Loans] [Non-Convertible Increase Term Loans][Non-Convertible Exchange Term Loans] [Convertible Term Loans]18	Amount of [Closing Date Non-Convertible Term Loans] [Non-Convertible Increase Term Loans][Non-Convertible Exchange Term Loans] [Convertible Term Loans Assigned19	Percentage of Assignor's [Closing Date Non-Convertible Term Loans] [Non-Convertible Increase Term Loans][Non-Convertible Exchange Term Loans] [Convertible Term Loans Assigned20	Resulting [Closing Date Non-Convertible Term Loans] [Non-Convertible Increase Term Loans][Non-Convertible Exchange Term Loans] [Convertible Term Loans] Amount for Assignor	Resulting [Closing Date Non-Convertible Term Loans] [Non-Convertible Increase Term Loans][Non-Convertible Exchange Term Loans] [Convertible Term Loans Amount for Assignee
			$__	$__	__%	$__	$__

15 List each Assignor, as appropriate.
16 List each Assignee, as appropriate.
17 Fill in appropriate terminology for each applicable type of facility under the Credit Agreement that is being assigned under this Assignment, i.e., Closing Date Non-Convertible Term Loans, Non-Convertible Increase Term Loan, Non-Convertible Exchange Term Loan, or Convertible Term Loans
18 Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
19 Subject to minimum amount requirements pursuant to Section 10.06(b)(i) of the Credit Agreement and subject to proportionate amount requirements pursuant to Section 10.06(b)(ii) of the Credit Agreement.
20 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[7. Trade Date:]21

Effective Date: __, 20__[TO BE INSERTED BY AGENT AND

WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: __ Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: __ Name:
Title:

21 To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

[Consented to and]22 Accepted: BEYOND, INC., as Agent

By: __ Name:
Title:

[Consented to:

KIRKLAND'S STORES, INC., as Lead Borrower

By: __ Name:
Title:]23

22 To the extent that the Agent's consent is required under Sections 10.06(b)(i)(B) and 10.06(b)(iii)(B) of the Credit Agreement.
23 To the extent required under Sections 10.06(b)(i)(B) and 10.06(b)(iii)(A) of the Credit Agreement.

Annex 1 to Assignment and Assumption

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

Reference is made to the Term Loan Credit Agreement dated as of October 21, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, as Lead Borrower (in such capacity, the "Lead Borrower") for itself and the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower", and collectively, the "Borrowers"), (ii) the Borrowers, (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Agent.

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][[the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Loan Parties or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Loan Parties or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and

(vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued up to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York, without giving effect to principles of conflicts of laws thereof.

4. Fees. Unless waived by the Agent in accordance with Section 10.06(b)(iv) of the Credit Agreement, this Assignment and Assumption shall be delivered to the Agent with a processing and recordation fee of $3,500.

5. Delivery. If the Assignee is not a Lender, the Assignee shall deliver to the Agent an Administrative Questionnaire.

Annex 1 to Assignment and Assumption

EXHIBIT F

[Reserved]

EXHIBIT G-1

[FORM OF U.S. TAX COMPLIANCE CERTIFICATE]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes) Reference is made to that certain Term Loan Credit Agreement, dated as of October 21,

2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: ____ Name:
Title:

Date: ___, 20[ ]

Exhibit G-1-2

EXHIBIT G-2

[FORM OF U.S. TAX COMPLIANCE CERTIFICATE]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes) Reference is made to that certain Term Loan Credit Agreement, dated as of October 21,

2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: ____ Name:
Title:
Date: ___, 20[ ]

Exhibit G-2-2

EXHIBIT G-3

[FORM OF U.S. TAX COMPLIANCE CERTIFICATE]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes) Reference is made to that certain Term Loan Credit Agreement, dated as of October 21,

2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and
(v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: ____ Name:
Title:
Date: ___, 20[ ]

Exhibit G-3-2

EXHIBIT G-4

[FORM OF U.S. TAX COMPLIANCE CERTIFICATE]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes) Reference is made to that certain Term Loan Credit Agreement, dated as of October 21,

2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement") by, among others, (i) Kirkland's Stores, Inc., a Tennessee corporation, for itself and as Lead Borrower (in such capacity, the "Lead Borrower") for the other Borrowers party thereto from time to time (together with the Lead Borrower, individually, a "Borrower" and, collectively, the "Borrowers"), (ii) the Borrowers,
(iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time, and (v) Beyond, Inc., as Administrative Agent and Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(g) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or
(ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: ____ Name:
Title:
Date: ___, 20[ ]

Exhibit G-4-2

Execution Version

Exhibit 10.19

SUBSCRIPTION AGREEMENT BY AND BETWEEN KIRKLAND'S, INC.

AND BEYOND, INC.

Dated as of October 21, 2024

TABLE OF CONTENTS

Page ARTICLE I PURCHASE AND SALE OF PURCHASED SHARES 1

Section 1.1 Purchase and Sale 1
Section 1.2 Closing 2

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY 2

Section 2.1 Organization and Power 3
Section 2.2 Authorization, Etc. 3
Section 2.3 Government Approvals 3
Section 2.4 Authorized and Outstanding Stock 4
Section 2.5 Subsidiaries 4
Section 2.6 Private Placement 5
Section 2.7 SEC Documents; Financial Information 5
Section 2.8 Internal Control Over Financial Reporting 5
Section 2.9 Disclosure Controls and Procedures 5
Section 2.10 Litigation 6
Section 2.11 Property 6
Section 2.12 Taxes 6
Section 2.13 Compliance with Laws; Permits 6
Section 2.14 No Additional Representations 6

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE PURCHASER 7

Section 3.1 Organization and Power 7
Section 3.2 Authorization, Etc. 7
Section 3.3 Government Approvals 7
Section 3.4 Investment Representations 7
Section 3.5 No Prior Ownership 8
Section 3.6 No Brokers or Finders 8
Section 3.7 ERISA 8

Section 3.8 No Additional Representations 8
ARTICLE IV COVENANTS OF THE PARTIES 9

Section 4.1 Restrictions on Transfer 9
Section 4.2 Restrictive Legends 10
Section 4.3 Use of Proceeds 11
Section 4.4 Confidentiality 11
Section 4.5 Filings; Other Actions 12

ARTICLE V CONDITIONS TO THE PARTIES' OBLIGATIONS 13

Section 5.1 Conditions of the Purchaser 13
Section 5.2 Conditions of the Company 14
ARTICLE VI MISCELLANEOUS 15

Section 6.1 Survival 15
Section 6.2 Counterparts 15
Section 6.3 Governing Law 15
Section 6.4 Entire Agreement; No Third Party Beneficiary 16

Section 6.5 Termination 16
Section 6.6 Expenses 16
Section 6.7 Notices 16
Section 6.8 Successors and Assigns 17
Section 6.9 Headings 17
Section 6.10 Amendments and Waivers 17
Section 6.11 Interpretation; Absence of Presumption 18
Section 6.12 Severability 18
Section 6.13 Specific Performance 18
Section 6.14 Public Announcement 18

EXHIBITS

Exhibit A	Definitions	A-1
Exhibit B	Form of Investor Rights Agreement	B-1

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT dated as of October 21, 2024 (this "Agreement") is by and between Kirkland's, Inc., a Tennessee corporation (the "Company"), and Beyond, Inc., a Delaware corporation (the "Purchaser"). Capitalized terms used but not defined herein have the meanings assigned to them in Exhibit A.

WHEREAS, the Company and Purchaser have simultaneously herewith entered into that certain Term Loan Credit Agreement, dated as of October 21, 2024 (the "Loan Agreement"), pursuant to which Purchaser has provided loans to the Company in the aggregate principal amount of $17,000,000.00, and in connection therewith the Company has issued to Purchaser a Junior Secured Convertible Promissory Note in the original principal amount of $8,500,000 (the "Convertible Note"), which upon the earlier of (a) the exercise of the Purchaser, in its capacity as agent under the Loan Agreement, of its right to convert, in accordance with Article 11 of the Loan Agreement and (b) the Shareholder Approval (as defined below) and on the terms and subject to the conditions hereinafter set forth, shall, without any further action on the part of the holder thereof, be converted into the right to receive shares of the Company's common stock, no par value per share (the "Common Stock");

WHEREAS, concurrently herewith, the Company and the Purchaser have entered into a Collaboration Agreement and a License Agreement (the "License and Collaboration Agreements") providing for the collaborative cross-selling, co-marketing and other collaborative engagements as between the parties hereto and their respective Affiliates;

WHEREAS, in addition, and upon Shareholder Approval (as defined below) and on the terms and subject to the conditions hereinafter set forth, the Purchaser desires to purchase from the Company, and the Company desires to issue and sell to the Purchaser, an additional 4,324,324 (subject to adjustment pursuant to Section 1.1) shares of Common Stock (such shares, the "SA Purchased Shares" together with the shares of Common Stock to be issued upon conversion of the Convertible Note, the "Purchased Shares") for a subscription price of $1.85 per share (representing a maximum aggregate subscription price of up to $7,999,999.40); and

WHEREAS, in order to permit the issuance of the Purchased Shares, the Company deems it advisable and in its best interests to seek the approval of the holders of its Common Stock to issue the Purchased Shares pursuant to this Agreement as required as required under the listing standards of Nasdaq, including Nasdaq Listing Rule 5635(b) and (d) (such approval, the "Shareholder Approval").

NOW THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
PURCHASE AND SALE OF PURCHASED SHARES

Section 1.1 Purchase and Sale. On the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, at the Closing, the Purchaser shall purchase, and the

Company shall issue and sell to the Purchaser, 4,324,324 shares of Common Stock, free and clear of any liens (other than liens incurred by Purchaser or its Affiliates, restrictions arising under applicable securities laws, or restrictions imposed by this Agreement, the Charter or the Investor Rights Agreement) for a purchase price of $1.85 per SA Purchased Share, the aggregate amount of which to be paid by wire transfer of immediately available funds to a bank account designated by the Company; provided, however, that in the event the Company reasonably determines in consultation with its outside advisors and Purchaser that the issuance of the maximum number of shares of Common Stock pursuant to this Agreement and upon conversion of the Convertible Note into shares of Common Stock in accordance with Article 11 of the Loan Agreement, to the extent not yet so converted, in each case immediately prior to the Closing, would result in Purchaser acquiring more than forty percent (40.0%) of the issued and outstanding Common Stock as of the Closing after giving effect to such issuance (the "Ownership Threshold"), the Company may reduce the maximum number of shares of Common Stock to be issued at Closing under this Agreement by the number of shares of Common Stock that the Company reasonably determines is necessary to prevent Purchaser from acquiring shares of Common Stock in excess of the Ownership Threshold. If the Company determines to make such a reduction, it shall inform Purchaser by delivery of written notice thereof prior to the Closing, which notice shall specify the total number of shares of Common Stock to be issued pursuant to this Agreement and the corresponding Additional Shares Shortfall (as defined in the Loan Agreement).

Section 1.2 Closing. On the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the issuance, sale and purchase of the Purchased Shares (the "Closing") shall take place remotely via the exchange of final documents and signature pages, as soon as practicable, but in no event later than three (3) Business Days after all applicable conditions to closing specified in Article V hereof having been satisfied or waived, respectively, by Purchaser or the Company, as applicable (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver thereof at the Closing), including the effectiveness of the Shareholder Approval, or at such other time and place as the Company and the Purchaser may mutually agree in writing. The date on which the Closing is to occur is herein referred to as the "Closing Date." At the Closing, upon receipt by the Company of payment of the portion of the purchase price to be paid in cash at the Closing therefor by or on behalf of such Purchaser to the Company by wire transfer of immediately available funds to an account designated in writing by the Company, and upon surrender of the Convertible Note for conversion, the Company will deliver to the Purchaser evidence reasonably satisfactory to the Purchaser of the issuance of the Purchased Shares in the name of the Purchaser by book-entry on the books and records of the Company. At the Closing, the Purchaser shall deliver to the Company a duly executed, valid, accurate and properly completed Internal Revenue Service Form W-9 certifying that such Purchaser is a U.S. person and that such Purchaser is not subject to backup withholding.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Purchaser that, except as set forth in the SEC Documents filed by the Company with the SEC on or after March 29, 2024 (other than disclosures in the "Risk Factors" or "Forward-Looking Statements" sections or similarly captioned sections of any such filings):

Section 2.1 Organization and Power. The Company and each of its Subsidiaries is (i) a corporation, limited liability company, partnership or other entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation (as applicable) and has all requisite corporate, limited liability company, partnership or other entity power and authority to own or lease its properties and to carry on its business as presently conducted and as proposed to be conducted in all material respects. The Company and each of its Subsidiaries is duly licensed or qualified to do business as a foreign corporation, limited liability company, partnership or other entity in each jurisdiction wherein the character of its property or the nature of the activities presently conducted by it, makes such qualification necessary, except where the failure to so qualify has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.2 Authorization, Etc. The Company has all necessary corporate power and authority and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Company of this Agreement and, subject to obtaining the Shareholder Approval, the consummation by the Company of the transactions contemplated hereby. The authorization, execution and delivery by the Company of this Agreement and, subject to obtaining the Shareholder Approval, the consummation by the Company of the transactions contemplated hereby do not and will not: (a) (i) violate or result in the breach of any provision of the Charter or Bylaws of the Company; (ii) result in the creation of any lien upon any assets of the Company or any of its Subsidiaries that is material to the operation of the Company and its Subsidiaries or the suspension, revocation or forfeiture of any material franchise, permit or license granted by a governmental authority to the Company or any of its Subsidiaries, other than liens under federal or state securities laws; or (iii) violate or result in a default under any material indenture or other agreement or instrument evidencing material indebtedness binding upon the Company or any of its Subsidiaries or their respective assets, or give rise to a right of any third party thereunder to require any material payment, repurchase or redemption to be made by the Company or any of its subsidiaries, or give rise to a right of, or result in, termination, cancellation or acceleration of any material obligation thereunder; or (b) with such exceptions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to the Company or any of its Subsidiaries or any material mortgage, credit agreement or contract to which the Company or any of its Subsidiaries is a party;
(ii) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation. This Agreement has been duly executed and delivered by the Company. Assuming due execution and delivery thereof by each of the other parties hereto or thereto, this Agreement will be a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 2.3 Government Approvals. No consent, approval or authorization of, or filing with, any court or governmental authority is or will be required on the part of the Company in connection with the execution, delivery and performance by the Company of this Agreement, except for (a) those which have already been made or granted; (b) the filing of a current report on

Form 8-K with the SEC; (c) filings with applicable state securities commissions, if any; or (d) the listing of the Purchased Shares with Nasdaq. The Company has taken all appropriate actions so that the restrictions on business combinations contained in T.C.A. § 48-103-205 and T.C.A. § 48- 103-206 will not apply with respect to or as a result of the issuance of the Purchased Shares to the Purchaser or the Transfer thereof to its Permitted Transferees in accordance with this Agreement, without any further action on the part of the stockholders or the Board of Directors.

Section 2.4 Authorized and Outstanding Stock.

(a) The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, and 10,000,000 shares designated as Preferred Stock, as defined in the Charter (the "Preferred Stock").

(b) As of September 30, 2024, (i) 13,117,942 shares of Common Stock were issued and outstanding, (ii) no shares of Preferred Stock were issued and outstanding, (iii) 977,538 shares of Common Stock were reserved for issuance upon the exercise of outstanding stock options or the vesting of unvested restricted stock awards, and restricted stock units issued pursuant to the Stock Plan or the vesting of unvested restricted stock units not issued pursuant to a Stock Plan, and (iv) 4,594,594 shares of Common Stock were reserved for issuance upon the conversion of the principal amount under the Convertible Note.

(c) All of the issued and outstanding shares of Common Stock of the Company are, and when issued in accordance with the terms hereof, the Purchased Shares will be, duly authorized and validly issued and fully paid and non-assessable. When issued in accordance with the terms hereof, the Purchased Shares will be free and clear of all liens (other than liens incurred by Purchaser or its Affiliates, restrictions arising under applicable securities laws, or restrictions imposed by this Agreement, or the Investor Rights Agreement).

(d) Except for the Convertible Note or as otherwise expressly described in this Agreement, including Section 2.4(b): (i) no subscription, warrant, option, convertible security or other right issued by the Company to purchase or acquire any shares of capital stock of the Company is authorized or outstanding; (ii) there is not any commitment of the Company to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock; (iii) the Company has no obligation to purchase, redeem or otherwise acquire any shares of its capital stock or to pay any dividend or make any other distribution in respect thereof; and (iv) there are no agreements between the Company and any holder of its capital stock relating to the acquisition, disposition or voting of the capital stock of the Company. No person or entity is entitled to any preemptive right granted by the Company with respect to the issuance of any capital stock of the Company.

Section 2.5 Subsidiaries. The Company's Subsidiaries consist of all the entities listed on Exhibit 21.1 to the Company's Form 10-K for the fiscal year ended February 3, 2024. Except as described in the SEC Documents, the Company, directly or indirectly, owns of record and beneficially, free and clear of all liens, all of the issued and outstanding capital stock or equity interests of each of its Subsidiaries. All of the issued and outstanding capital stock or equity interests of the Company's Subsidiaries has been duly authorized and validly issued, and in the case of corporations, is fully paid and non-assessable. Except as described in the SEC Documents,

there are no outstanding rights, options, warrants, preemptive rights, conversion rights, rights of first refusal or similar rights for the purchase or acquisition from any of the Company's Subsidiaries of any securities of such Subsidiaries nor are there any commitments to issue or execute any such rights, options, warrants, preemptive rights, conversion rights or rights of first refusal.

Section 2.6 Private Placement. Assuming the accuracy of the representations and warranties of the Purchaser set forth in Section 3.4 (Investment Representations), the offer and sale of the Purchased Shares pursuant to this Agreement will be exempt from the registration requirements of the Securities Act.

Section 2.7 SEC Documents; Financial Information. Since January 1, 2022, the Company has timely filed (a) all annual and quarterly reports and proxy statements (including all amendments, exhibits and schedules thereto) and (b) all other reports and other documents (including all amendments, exhibits and schedules thereto), in each case required to be filed by the Company with the SEC pursuant to the Exchange Act and the Securities Act except, in the case of clause (b), where the failure to file has not had, and would not reasonably be expected to be material to the Company. As of their respective filing dates, such SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder applicable to such SEC Documents, and as of their respective dates none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents (the "Financial Statements") comply as of their respective dates in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto (except as may be indicated in the notes thereto or, in the case of the unaudited statements, as permitted by Form 10-Q promulgated by the SEC), and present fairly in all material respects as of their respective dates the consolidated financial position of the Company and its Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for each of the respective periods, all in conformity with GAAP, applied on a consistent basis during the periods involved (except as may be indicated in such Financial Statements or the notes thereto).

Section 2.8 Internal Control Over Financial Reporting. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the Audit Committee of the Board of Directors (a) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company'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 Company's internal control over financial reporting.

Section 2.9 Disclosure Controls and Procedures. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) that are designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the

time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure.

Section 2.10 Litigation. There is no litigation or governmental proceeding pending or, to the knowledge of the Company, threatened in writing, against the Company or any of its Subsidiaries or affecting any of the business, operations, properties or assets of the Company or any of its Subsidiaries which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in default with respect to any order, writ, injunction, decree, ruling or decision of any court, commission, board or other government agency that is expressly applicable to the Company or any of its Subsidiaries which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.11 Property. The Company and each of its Subsidiaries has good and valid title to, or valid leasehold interests in or other contractual right to use, all real and personal property material to its business, if any (excluding, for the avoidance of doubt, intellectual property).

Section 2.12 Taxes. The Company and its Subsidiaries have filed all material tax returns required to have been filed by them (taking into account applicable extensions to file such returns) and each such tax return is true, correct and complete in all material respects. The Company and its Subsidiaries have paid all material Taxes due and payable. There are no (a) audits, examinations or other administrative or judicial proceedings ongoing or currently pending with respect to the assessment or collection of any material Taxes or (b) outstanding claims for assessment or collection of any material Taxes.

Section 2.13 Compliance with Laws; Permits. The Company and its Subsidiaries are in compliance with all applicable laws, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries possess all permits and licenses of governmental authorities that are required to conduct their business, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.14 No Additional Representations. Except for the representations and warranties made by the Company in this Article II, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company or any Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other Person makes or has made any representation or warranty to the Purchaser, or any of its Affiliates or representatives, with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company or any of its Subsidiaries or their respective business, or (b) any oral or written information presented to the Purchaser or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Company that:

Section 3.1 Organization and Power. The Purchaser is a corporation duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite corporate or other entity power and authority to own its properties and to carry on its business as presently conducted.

Section 3.2 Authorization, Etc. The Purchaser has all necessary corporate power and authority and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Purchaser of this Agreement and the consummation by the Purchaser of the transactions contemplated hereby. The authorization, execution, delivery and performance by the Purchaser of this Agreement, and the consummation by the Purchaser of the transactions contemplated hereby do not and will not: (a) violate or result in the breach of any provision of the certificate of incorporation and bylaws (or similar organizational document) of the Purchaser; or (b) with the exceptions that are not reasonably likely to have, individually or in the aggregate, a material adverse effect on its ability to perform its obligations under this Agreement: (i) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to the Purchaser or any material contract to which the Purchaser is a party; or (ii) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation. This Agreement has been duly executed and delivered by the Purchaser. Assuming due execution and delivery thereof by the other parties hereto or thereto, this Agreement will be a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, except as the enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as the enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 3.3 Government Approvals. No consent, approval, license or authorization of, or filing with, any court or governmental authority is or will be required on the part of the Purchaser in connection with the execution, delivery and performance by the Purchaser of this Agreement, except for: (a) those which have already been made or granted; (b) the filing with the SEC of a Schedule 13D or Schedule 13G and a Form 3 to report the Purchaser's ownership of the Purchased Shares; or (c) those where the failure to obtain such consent, approval or license would not have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder.

Section 3.4 Investment Representations.

(a) The Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(b) The Purchaser has been advised by the Company that the Purchased Shares have not been registered under the Securities Act, that the Purchased Shares will be issued on the basis of the statutory exemption provided by Section 4(a)(2) under the Securities Act or Regulation

D promulgated thereunder, or both, relating to transactions by an issuer not involving any public offering and under similar exemptions under certain state securities laws, that this transaction has not been reviewed by, passed on or submitted to any federal or state agency or self-regulatory organization where an exemption is being relied upon, and that the Company's reliance thereon is based in part upon the representations made by the Purchaser in this Agreement. The Purchaser acknowledges that it has been informed by the Company of, or is otherwise familiar with, the nature of the limitations imposed by the Securities Act and the rules and regulations thereunder on the transfer of securities.

(c) The Purchaser is purchasing the Purchased Shares for its own account and not with a view to, or for sale in connection with, any distribution thereof in violation of federal or state securities laws.

(d) By reason of its business or financial experience, the Purchaser has the capacity to protect its own interest in connection with the transactions contemplated hereunder.

(e) The Company has provided to the Purchaser all documents and information that the Purchaser has requested relating to an investment in the Company. The Purchaser recognizes that investing in the Company involves substantial risks, and has taken full cognizance of and understands all of the risk factors related to the acquisition of the Purchased Shares. The Purchaser has carefully considered and has, to the extent it believes such discussion necessary, discussed with the Purchaser's professional legal, tax and financial advisers the suitability of an investment in the Company, and the Purchaser has determined that the acquisition of the Purchased Shares is a suitable investment for the Purchaser. The Purchaser has not relied on the Company for any tax or legal advice in connection with the purchase of the Purchased Shares. In evaluating the suitability of an investment in the Company, the Purchaser has not relied upon any representations or other information (other than the representations and warranties of the Company set forth in Article II).

Section 3.5 No Prior Ownership. Prior to the Closing, the Purchaser does not have record or beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of any shares of the Company's Common Stock.

Section 3.6 No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or claim against or upon the Company, any of its Subsidiaries or any Purchaser for any commission, fee or other compensation as a finder or broker because of any act by the Purchaser.

Section 3.7 ERISA. The Purchaser does not hold, and no part of the funds used by the Purchaser to acquire any Purchased Shares constitutes, "plan assets" (within the meaning of the ERISA Regulations). The Purchaser is not (a) an "employee benefit plan" that is subject to Part 4 of Title I of ERISA, (b) a "plan" to which Section 4975 of the Code applies or (c) an entity whose underlying assets could be deemed to include "plan assets" by reason of an employee benefit plan's investment in such entity.

Section 3.8 No Additional Representations. The Purchaser acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained

in Article II, neither the Company nor any other Person, makes any express or implied representation or warranty with respect to the Company, its Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Purchaser, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties. In particular, without limiting the foregoing disclaimer, the Purchaser acknowledges and agrees, on behalf of itself and its Affiliates, that neither the Company nor any other Person, makes or has made any representation or warranty with respect to, and the Purchaser, on behalf of itself and its Affiliates, hereby disclaims reliance upon
(a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, its Subsidiaries or their respective business, or (b) without limiting the representations and warranties made by the Company in Article II, any information presented to the Purchaser or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby. To the fullest extent permitted by applicable law, without limiting the representations and warranties contained in Article II, neither the Company nor any of its Subsidiaries shall have any liability to any Purchaser or its Affiliates or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any other representation or warranty, either express or implied, included in any information or statements (or any omissions therefrom) provided or made available by the Company or its Subsidiaries to Purchaser or its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated by this Agreement.

ARTICLE IV COVENANTS OF THE PARTIES

Section 4.1 Restrictions on Transfer.

(a) After the Closing and until the end of the Standstill Period (as defined in the Investor Rights Agreement), the Purchaser shall not Transfer any of the Purchased Shares to any Person without the consent of the Company; provided, however, that, without the consent of the Company, the Purchaser may Transfer Purchased Shares (i) to (A) a Permitted Transferee of the Purchaser that agrees to be bound by the terms of this Article IV pursuant to a written agreement in form and substance reasonably satisfactory to the Company (and upon such Transfer the Permitted Transferee shall become a "Purchaser" for purposes of this Article IV) or (B) to any Person so long as such Transfer represents less than ten percent (10%) of the outstanding capital stock of the Company; provided, that, Purchaser shall not knowingly (after reasonable inquiry) Transfer any of the Purchased Shares to a Company Competitor; (ii) pursuant to a tender or exchange offer, merger, consolidation, division, acquisition, reorganization or recapitalization involving the Company; or (iii) pursuant to a traditional underwritten offering (including any block trade) or Rule 144 under the Securities Act (provided that any such Transfer pursuant to Rule 144 either is not a direct placement or satisfies the requirements of paragraph (f) of such rule).

(b) In any event, Restricted Securities shall not be Transferred except upon the conditions specified in Section 4.2, which conditions are intended to ensure compliance with the provisions of the Securities Act. Any attempted Transfer in violation of this Section 4.1 shall be void ab initio.

(c) For so long as Purchaser holds greater than ten percent (10%) of the issued and outstanding Common Stock, the Company will not adopt a Rights Plan or make effective any distribution of rights in connection therewith without the prior written consent of Purchaser.

Section 4.2 Restrictive Legends.

(a) Each certificate representing the Purchased Shares (unless otherwise permitted by the provisions of Section 4.2(d)) shall be stamped or otherwise imprinted with a legend in substantially the following form (in addition to any legend required under applicable state securities laws):

> "THE OFFER AND SALE OF THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND SUCH SHARES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT."

(b) In addition, for so long as the Purchased Shares are subject to the restrictions set forth in Section 4.1, each certificate representing the Purchased Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN A SUBSCRIPTION AGREEMENT. THE COMPANY WILL MAIL TO THE HOLDER OF THIS CERTIFICATE A COPY OF SUCH SUBSCRIPTION AGREEMENT, AS IN EFFECT ON THE DATE OF MAILING, WITHOUT CHARGE, PROMPTLY AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR."

(c) The Purchaser consents to the Company making a notation on its records and giving instructions to any transfer agent of the Purchased Shares in order to implement the restrictions on transfer set forth in this Section 4.2.

(d) Prior to any proposed Transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed Transfer, a Purchaser shall give written notice to the Company of such Purchaser's intention to effect such Transfer. Each such notice shall describe the manner and circumstances of the proposed Transfer in sufficient detail, and if requested by the Company in writing an opinion of legal counsel reasonably satisfactory to the Company to the effect that the proposed Transfer of the Restricted Securities may be effected without registration under the Securities Act. Notwithstanding the foregoing, in the event a Purchaser shall give the Company a representation letter containing such representations as the Company shall reasonably request, the Company will not require such legal opinion or such other evidence (A) in a routine sales transaction in compliance with Rule 144

under the Securities Act, (B) in any transaction in which a Purchaser that is a corporation distributes Restricted Securities solely to its majority owned subsidiaries or Affiliates for no consideration or (C) in any transaction in which a Purchaser that is a partnership or limited liability company distributes Restricted Securities solely to its Affiliates (including affiliated fund partnerships), or partners or members of such Purchaser or its Affiliates for no consideration. Each certificate evidencing the Restricted Securities transferred shall bear the appropriate restrictive legend set forth in Section 4.2 above, except that such certificate shall not bear the first such restrictive legend if such legend is not required in order to establish compliance with any provisions of the Securities Act. Upon the request of a Purchaser of a certificate bearing the first such restrictive legend and, if necessary, the appropriate evidence as required by clause (i) or (ii) above, the Company shall remove the first such restrictive legend from such certificate and from the certificate to be issued to the applicable transferee if such legend is not required in order to establish compliance with any provisions of the Securities Act and the Purchaser promptly Transfers the Purchased Shares. If the Purchaser holds a certificate bearing the second restrictive legend, upon the request of the Purchaser, the Company shall remove such restrictive legend from such certificate when the provisions of Section 4.2 are no longer applicable to the applicable Purchased Shares.

Section 4.3 Use of Proceeds. The Company shall use the proceeds from the sale of the Purchased Shares (a) to fund working capital, (b) to pay for the fees and expenses incurred by the Company in connection with the transactions contemplated by this Agreement, and (c) general corporate purposes.

Section 4.4 Confidentiality.

(a) So long as the Purchaser has the right to designate or nominate one or more directors to the Board of Directors pursuant to the Investor Rights Agreement, (i) the Purchaser shall keep all Confidential Information confidential and shall not, without the Company's prior written consent, disclose any Confidential Information in any manner whatsoever, in whole or in part and (ii) the Purchaser shall not use any Confidential Information, other than in connection with the performance of its obligations or exercise of remedies hereunder. During such period, the Purchaser shall disclose the Confidential Information only to such of its Representatives who need to know the Confidential Information for such purpose, who are informed by the Purchaser of the confidential nature of the Confidential Information and who either (A) are otherwise bound by an obligation of confidentiality to the Company to ensure compliance with the terms of this Section 4.4 or (B) shall agree to act in accordance with the terms and conditions of this Section 4.4. The Purchaser shall be responsible for any non-compliance with this Section 4.4 by its Representatives. The Purchaser shall return to the Company or, insofar as reasonably practicable, destroy all copies of Confidential Information upon the Company's written request. Notwithstanding the foregoing, the Purchaser may retain such materials to the extent required by applicable law or in accordance with internal compliance procedures; provided, however, that the Purchaser shall keep all such copies confidential in accordance with this Section 4.4.

(b) In the event that the Purchaser or any of its Representatives is required or requested by applicable law (including oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any of the Confidential Information, the Purchaser will provide the Company with prompt notice (unless such

notification is prohibited by applicable law and other than in connection with a routine audit or examination by, or a blanket document request from, a regulatory or governmental entity that does not reference the Company or this Agreement) so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 4.4. In the event that such a protective order or other remedy is not obtained, that no such notice is required to be provided to the Company or that the Company waives compliance with the provisions of this Section 4.4, the Purchaser may disclose such Confidential Information without liability hereunder.

Section 4.5 Filings; Other Actions.

(a) The Company agrees (i) to promptly prepare and file a proxy statement with the SEC (the "Proxy Statement") to be sent to the Company's shareholders in connection with a special meeting of holders of the Company's Common Stock (the "Special Meeting"), to be held for the purpose of, among other things, seeking the Shareholder Approval described herein and for such other purposes within the sole discretion of the Company, (ii) to call and hold the Special Meeting no later than the date that is 180 days following the date hereof, in compliance with applicable law, the Charter, the Bylaws and the Nasdaq Listing Rules, and (iii) to use commercially reasonable efforts to obtain the Shareholder Approval at the Special Meeting. Subject to the directors' fiduciary duties, the Proxy Statement shall include the recommendation from the Board of Directors that the Company's stockholders vote in favor of the Shareholder Approval. The Company shall use its commercially reasonable efforts to solicit from its stockholders proxies in favor of the Shareholder Approval and to obtain the Shareholder Approval. Purchaser and its Affiliates agree to furnish to the Company all information concerning Purchaser and its Affiliates as the Company may reasonably request in connection with the preparation and filing of the Proxy Statement and the Special Meeting. The Company shall respond reasonably promptly to any comments received from the SEC with respect to the Proxy Statement. The Company shall provide to Purchaser, promptly after receipt thereof, any written comments from the SEC or any written request from the SEC or its staff for amendments or supplements to the Proxy Statement and shall provide Purchaser with copies of all correspondence between the Company, on the one hand, and the SEC and its staff, on the other hand, relating to the Proxy Statement. Notwithstanding anything to the contrary stated above, prior to filing or mailing the Proxy Statement (or, in each case, any amendment or supplement thereto) or responding to any comments of the SEC or its staff with respect thereto, the Company shall provide Purchaser with a reasonable opportunity to review and comment on such document or response with respect to only the proposal for Shareholder Approval and those portions of the Proxy Statement (or any amendment or supplement thereto) directly related to such proposal. Until the completion of the Special Meeting, the Purchaser shall promptly correct any information supplied by it for inclusion, or incorporation by reference, in the Proxy Statement if, and to the extent, any such previously provided information shall, at that time, include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(b) If requested by Purchaser and permissible under applicable law, the Company shall adjourn the Special Meeting for a period of up to ten (10) Business Days if, on a date for which the Special Meeting is scheduled, a quorum is not present or the Company has not received proxies representing a number of shares of Common Stock sufficient to obtain the Shareholder Approval, for the purpose of soliciting additional proxies and votes in favor of the

Shareholder Approval. The Company shall keep Purchaser reasonably informed with respect to the number of proxies received and its preliminary vote tabulation prior to the Special Meeting.

(c) Purchaser hereby agrees with the Company that it shall, and shall cause its Affiliates (including by proxy, if applicable), to vote all shares of Common Stock held by it or its Affiliates and eligible to be voted in accordance with applicable law and the Nasdaq Listing Rules in favor of the proposals contemplated by the Shareholder Approval at the Special Meeting. From the date hereof through the completion of the Special Meeting (or an adjournment thereof), Purchaser agrees that it shall not, and shall cause each of its Affiliates not to, transfer, sell, gift, pledge or otherwise dispose of its respective shares of Common Stock unless the transferee of such shares of Common Stock agrees in writing prior to any transfer, sale, gift, pledge or other disposition to vote in favor of the proposal contemplated by the Shareholder Approval. Any attempt to transfer shares of Common Stock that does not comply with the provisions of the immediately preceding sentence shall be null and void ab initio.

(d) In the event Shareholder Approval is not obtained at the initial Special Meeting held pursuant to this Section 4.5, the Company shall use commercially reasonable efforts to hold a second Special Meeting not later than 180 days following the date hereof, provided that in no event shall the Company be required to hold more than two (2) Special Meetings for the purpose of seeking the Shareholder Approval.

(e) From and after the date hereof until the earlier of the Closing Date and the date on which this Agreement is terminated, the Company covenants and agrees as to itself and its Subsidiaries not to take any action that is intended or would reasonably be expected to result in any condition in Section 5.2 not being satisfied and the Purchaser covenants and agrees as to itself and its Subsidiaries not to take any action that is intended or would reasonably be expected to result in any condition in Section 5.1 not being satisfied.

ARTICLE V
CONDITIONS TO THE PARTIES' OBLIGATIONS

Section 5.1 Conditions of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated hereby to be consummated at the Closing are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties of the Company contained in Article II of this Agreement shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct in all material respects as of such date or time), except where the failure of such representations and warranties to be so true and correct, without giving effect to any qualification or limitation as to "materiality," "Material Adverse Effect" or similar qualifier set forth therein, has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Covenants. The Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing.

(c) Shareholder Approval. Prior to the Closing Date, Shareholder Approval shall have been obtained.

(d) Osmium Shareholder Voting Agreement. The Osmium Shareholder Voting Agreement shall have been entered into and be in full force and effect.

(e) License and Collaboration Agreements. The License and Collaboration Agreements shall have been entered into and be in full force and effect.

Section 5.2 Conditions of the Company. The obligations of the Company to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent:

(a) Representations and Warranties; Performance. Each of the representations and warranties of the Purchaser contained in Article III of this Agreement shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct in all material respects as of such date or time), except where the failure of such representations and warranties to be so true and correct, without giving effect to any qualification or limitation as to "materiality," "material adverse effect" or similar qualifier set forth therein, has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Purchaser's ability to consummate the transactions under this Agreement and the Investor Rights Agreement.

(b) Covenants. The Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Purchaser at or prior to the Closing.

(c) Loan Agreement. The Loan Agreement shall have been entered into, fully funded by Purchaser, and remain in full force and effect.

(d) License and Collaboration Agreements. The License and Collaboration Agreements shall have been entered into and remain in full force and effect.

(e) Consideration for the Securities. The Purchaser shall have paid the cash portion of purchase price for the Purchased Shares to be purchased by such Purchaser in full at the Closing either by certified check or by wire transfer of immediately available funds to an account designated in writing by the Company, and shall have, upon request by the Company, surrendered of the Convertible Note for conversion thereof; provided that the issuance of the Purchased Shares hereunder in respect of the Convertible Note at Closing shall be deemed to be evidence of conversion thereof without any further act of Purchaser.

(f) Shareholder Approval. Prior to the Closing Date, Shareholder Approval shall have been obtained.

ARTICLE VI MISCELLANEOUS

Section 6.1 Survival. Except in the case of intentional and actual fraud, the representations and warranties of the parties contained in Article II and Article III hereof shall not survive, and shall terminate automatically as of, the Closing, and there shall be no liability in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any party or any of their respective Representatives. All other covenants and agreements of the parties contained herein shall survive the Closing in accordance with their terms.

Section 6.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts of signature pages to this Agreement may be transmitted by PDF (portable document format) or facsimile and such PDFs or facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

Section 6.3 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the state of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Delaware.

(b) Any dispute relating hereto shall be heard first in the Chancery Court for the State of Delaware or, if unavailable, the federal court in the State of Delaware, and, if applicable, in any state or federal court located in the State of Delaware in which appeal from such courts may validly be taken (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Persons may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of

process on such party as provided in Section 6.7 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 6.4 Entire Agreement; No Third Party Beneficiary. This Agreement and the Investor Rights Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. This Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.5 Termination. Either party may terminate this Agreement upon ten (10) days' prior written notice to the other party if (a) any of the License and Collaboration Agreements have been terminated, in whole or in part for any reason, or (b) the Shareholder Approval has not been obtained on or prior to 180 days after the date hereof (provided, however, if not earlier terminated, this Agreement shall automatically terminate in the event Shareholder Approval is not obtained at the second Special Meeting at which a vote is held for purposes of seeking the Shareholder Approval).

Section 6.6 Expenses. All fees, costs and expenses incurred in connection with this Agreement and the Investor Rights Agreement and the transactions contemplated hereby and thereby, including accounting and legal fees shall be paid by the party incurring such expenses, except that, within three days following the Special Meeting at which a vote is held for purposes of seeking the Shareholder Approval, the Company shall reimburse the Purchaser for all reasonable and documented out-of-pocket costs and expenses, in an aggregate amount not to exceed two hundred fifty thousand dollars ($250,000), incurred by the Purchaser in connection with the transactions contemplated by this Agreement.

Section 6.7 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows:
(a) if sent by registered or certified mail in the United States return receipt requested, upon receipt;
(b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in the foregoing clause (a) or (b), when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

Kirkland's, Inc. 5310 Maryland Way
Brentwood, Tennessee 37027
E-mail: Amy.Sullivan@kirklands.com

Attention: Amy Sullivan, President, Chief Executive Officer with a copy (which shall not constitute notice) to:

Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
E-mail: jfuller@bassberry.com Attention: John Fuller

If to a Purchaser, to:

Beyond, Inc.
799 W. Coliseum Way Midvale, UT 84047
Attention: E. Glen Nickle, Chief Legal Officer E-mail: gnickle@beyond.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Attention: Zachary Judd; Matthew Galligan E-mail: zachary.judd@lw.com
matthew.galligan@lw.com

Section 6.8 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto Any purported assignment or delegation in violation of this Agreement shall be null and void ab initio.

Section 6.9 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.10 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by each party hereto. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed

or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.11 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules, if any, and Exhibits) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits, and Schedules to this Agreement unless otherwise specified; (iii) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified; and (iv) the word "or" shall not be exclusive.

(b) With regard to each and every term and condition of this Agreement and any and all agreements and instruments subject to the terms hereof, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

Section 6.12 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

Section 6.13 Specific Performance. The parties hereto agree that irreparable damage could occur and that the a party may not have any adequate remedy at law in the event that any of the provisions of this Agreement are not performed in accordance with their terms or were otherwise breached. Accordingly, each party shall without the necessity of proving the inadequacy of money damages or posting a bond be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms, provisions and covenants contained therein, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 6.14 Public Announcement. Subject to each party's disclosure obligations imposed by applicable law or the rules of any stock exchange upon which its securities are listed,

each of the parties hereto will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement and any of the transactions contemplated by this Agreement, and neither the Company nor any Purchaser will make any such news release or public disclosure without first consulting with the other, and, in each case, also receiving the other's consent (which shall not be unreasonably withheld or delayed) and each party shall coordinate with the party whose consent is required with respect to any such news release or public disclosure. Notwithstanding the foregoing, this Section 6.15 shall not apply to (a) any press release or other public statement made by the Company or a Purchaser that is consistent with prior public announcements make in accordance with this Section 6.15 and does not contain any information relating to the transactions that has not been previously announced or made public in such prior disclosures made in accordance with the terms of this Agreement or (b) is made in confidence to its auditors, attorneys, accountants, financial advisors or other Permitted Transferees.

[*remainder of page intentionally left blank*]

The parties have caused this Subscription Agreement to be executed as of the date first written above.

KIRKLAND'S, INC.

By: /s/ Amy E. Sullivan

Name: Amy E. Sullivan

Title: President

BEYOND, INC.

By:

Name:

Title:

[Signature Page to Subscription Agreement]

The parties have caused this Subscription Agreement to be executed as of the date first written above.

KIRKLAND'S, INC.

By:

Name:

Title:

BEYOND, INC.

By: /s/ Marcus Lemonis

Name: Marcus Lemonis

Title: Executive Chairman

EXHIBIT A DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

"Board of Directors" means the Company's board of directors.

"Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"Bylaws" means the Bylaws of the Company, amended and restated, on March 27, 2006, as the same may be further amended, supplemented or restated.

"Charter" means the Company's Amended and Restated Charter, as the same may be further amended, supplemented or restated.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company Competitor" means any Person whose primary business is directly operating in the home décor or home furnishings retail business, provided, however, that a Person shall not be deemed to be a "Company Competitor" solely as a result of (a) owning less than ten percent (10%) of the issued and outstanding voting securities of a Company Competitor or (b) in the case of a Person that is a private equity fund, having an investment in a portfolio company that is a Company Competitor.

"Confidential Information" means information regarding the Company or its Subsidiaries that is non-public, confidential or proprietary in nature, together with all analyses, compilations, forecasts, studies or other documents prepared by the Purchaser or its Representatives which contain or otherwise reflect such information. "Confidential Information" shall not include such portions of the Confidential Information that (a) are or become generally available to the public other than as a result of the Purchasers' or its Affiliates' disclosure in violation of this Agreement,
(b) become available to the Purchasers or its Affiliates on a non-confidential basis from a source other than the Company or its Subsidiaries, (c) was already in the Purchaser's or its Affiliate's possession prior to the date of this Agreement and which was not obtained from the Company or its Subsidiaries or (d) are independently developed by the Purchaser or its Affiliates without reference to the Confidential Information.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Regulations" means the regulations promulgated by the Department of Labor in 29 C.F.R. § 2510.3-101, and any amendments or successor regulations thereto, as modified by Section 3(42) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"GAAP" means generally accepted accounting principles as in effect in the United States.

"Governmental Entity" means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality.

"Hazardous Substance" means any waste, substance, product or material defined or regulated as "hazardous" or "toxic" by any applicable law, rule, regulation or order described in the definition of "Requirements of Environmental Law," including petroleum and any fraction thereof, and any radioactive materials and waste.

"Investor Rights Agreement" means the Investor Rights Agreement between the Company and the Purchaser in the form attached to the Agreement as Exhibit B.

"Material Adverse Effect" means a material adverse effect upon the financial condition, assets, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that any such effect resulting or arising from or relating to any of the following matters shall not be considered when determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: (a) any change, development, occurrence or event affecting the industry in which the Company and its Subsidiaries operate; (b) any conditions affecting the United States general economy or the general economy in any geographic area in which the Company or its Subsidiaries operate or developments or changes therein or the financial and securities markets and credit markets in the United States or elsewhere in the world; (c) political conditions, including the continuation, occurrence, escalation, outbreak or worsening of any hostilities, war, political action, acts of terrorism, sabotage or military conflicts, whether or not pursuant to the declaration of an emergency or war; (d) any conditions resulting from the existence, occurrence or continuation of any force majeure events, including any earthquakes, floods, hurricanes, tropical storms, fires or other natural or manmade disasters, any epidemic, pandemic (including COVID-19) or other similar outbreak (including any non-human epidemic, pandemic or other similar outbreak) or any other national, international ore regional calamity; (e) changes in any law, rule, regulation or GAAP; (f) changes in the market price or trading volume of Common Stock or any other equity, equity-related or debt securities of the Company or its Affiliates (it being understood that the underlying circumstances, events or reasons giving rise to any such change can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); (g) any announcement of this Agreement or the transactions contemplated hereby; (h) any failure to meet any internal or public projections, forecasts, estimates or guidance for any period (it being understood that the underlying circumstances, events or reasons giving rise to any such failure can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); or (i) any effect arising out of or resulting from any claims or proceedings made by any of the Company's stockholders arising out of or related to this Agreement; provided, that any of the

matters described in clauses (a), (b) or (c), will be taken into account for purposes of determining whether or not a Material Adverse Effect has occurred to the extent that such matter disproportionately and adversely affects the Company and its Subsidiaries, taken as a whole, as compared with other companies operating in the industry in which the Company and its Subsidiaries operate.

"Nasdaq" means the Nasdaq Stock Market.

"Osmium Shareholder Voting Agreement" means that certain Letter Agreement, dated as of October 18, 2024, executed by Osmium Partners, LLC.

"Permitted Transferee" means any Affiliate of Purchaser.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

"Representatives" means a Persons' Affiliates, employees, agents, consultants, accountants, attorneys or financial advisors and direct or indirect members or partners or Affiliates of the foregoing.

"Requirements of Environmental Law" means all requirements imposed by any law (including the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Clean Air Act, and any state analogues of any of the foregoing), rule, regulation, or order of any governmental authority which relate to (a) pollution, protection or clean-up of the air, surface water, ground water or land; (b) solid, gaseous or liquid waste or Hazardous Substance generation, recycling, reclamation, release, threatened release, treatment, storage, disposal or transportation; (c) exposure of Persons or property to Hazardous Substances; or (d) the manufacture, presence, processing, distribution in commerce, use, discharge, releases, threatened releases, emissions or storage of Hazardous Substances into the environment.

"Restricted Securities" means Purchased Shares required to bear the legend set forth in Section 4.2(a) under the applicable provisions of the Securities Act.

"Rights Plan" means any plan or arrangement of the sort commonly referred to as a "tax benefit preservation plan" or "rights plan" or "stockholder rights plan" or "poison pill" that is designed to prevent, hinder, restrict or increase the cost to a potential acquirer of exceeding the applicable ownership thresholds through the issuance of new rights, common stock or preferred shares (or any other security or device that may be issued to stockholders of the Company, other than ratably to all stockholders of the Company) that carry severe redemption provisions, favorable purchase provisions or otherwise, and any related rights agreement.

"SEC" means the Securities and Exchange Commission.

"SEC Documents" means all reports, schedules, registration statements, proxy statements and other documents (including all amendments, exhibits and schedules thereto) filed by the Company with the SEC.

"Securities Act" means the Securities Act of 1933, as amended.

"Stock Plan" means the Kirkland's, Inc. Amended and Restated 2002 Equity Incentive Plan.

"Subsidiary" means, when used with reference to a party, any corporation or other

organization, whether incorporated or unincorporated, of which such party or any other Subsidiary of such party is a general partner or serves in a similar capacity, or, with respect to such corporation or other organization, at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

"Tax" and "Taxes" means all federal, state, local and foreign taxes (including, without limitation, income, franchise, property, sales, withholding, payroll and employment taxes), assessments, fees or other charges imposed by any Governmental Entity, including any interest, additions to tax or penalties applicable thereto.

"Transfer" means any direct or indirect (a) sale, transfer, hypothecation, assignment, gift, bequest or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by realization upon any lien or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings) or (b) grant of any option, warrant or other right to purchase or the entry into any hedge, swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of Common Stock; provided, however, that any direct or indirect transfer, sale or assignment of the ownership interests of the Purchaser or its Affiliates shall not be considered a "Transfer" as such term is used herein. The term "Transferred" shall have a correlative meaning.

2. The following terms are defined in the Sections of the Agreement indicated:

Term	Section
Agreement	Preamble
Applicable Matters	6.3(b)
Chosen Court	6.3(b)
Closing	1.2
Closing Date	1.2
Common Stock	Recitals
Convertible Note	Recitals
Company	Preamble
Financial Statements	2.7
License and Collaboration Agreements	Recitals
Loan Agreement	Recitals
Ownership Threshold	1.1
Preferred Stock	2.4(a)
Proxy Statement	4.5(a)
Purchased Shares	Recitals

Purchaser	Preamble
Shareholder Approval	Recitals
Special Meeting	4.5(a)

EXHIBIT B

FORM OF INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "Agreement") is made by and between Kirkland's, Inc., a Tennessee corporation (the "Company") and Beyond, Inc., a Delaware corporation (the "Investor") on behalf of themselves and their respective Affiliates (as defined below) (the Company and the Investor together, collectively, the "Parties").

WHEREAS, contemporaneously herewith, the Company and the Investor entered into a subscription agreement (the "Subscription Agreement") pursuant to which Investor agreed to purchase, and the Company agreed to issue to Investor, shares of common stock, no par value (the "Common Stock"), of the Company, subject to the terms and conditions therein, including obtaining Shareholder Approval (as defined in the Subscription Agreement, "Shareholder Approval");

WHEREAS, as a condition to the entry into the Subscription Agreement by the Parties, the Parties have determined that it is in their respective best interests to come to an agreement with respect to the appointment by Investor of one or more nominees to the Company's Board of Directors (the "Board") and certain other matters, as provided in this Agreement; and

NOW, THEREFORE, in consideration of and reliance upon the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Board Matters & Voting.

1.1 Investor shall, subject to and effective immediately following Shareholder Approval and the issuance of the Common Stock pursuant to the Subscription Agreement (the "Effective Date") have the right to designate (i) two (2) persons for appointment to the Board so long as the Investor continues to Beneficially Own (as defined below) in the aggregate at least twenty percent (20%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments), or (ii) one (1) person for appointment to the Board so long as the Investor continues to Beneficially Own (as defined below) in the aggregate more than five percent (5%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments) but less than the percentage specified above in clause (i), in each case, each of whom shall qualify as independent for NASDAQ listing purposes and the applicable rules and regulations of the Securities and Exchange Commission ("SEC") (each, an "Appointee"); provided, however, for the avoidance of doubt, if the Investor ceases to Beneficially Own (as defined below) in the aggregate at least five percent (5%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments), the right to designate an Appointee to the Board pursuant to this Agreement shall terminate. Promptly following the Effective Date, (i) two (2) existing directors of the Company shall resign from the Board, and (ii) the Company, the Board, and all applicable committees of the Board shall take all necessary actions, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board, to appoint the Appointees designated by the Investor as directors of the Company with a term expiring at the

Company's next annual meeting of shareholders (the "Annual Meeting"). For the avoidance of doubt, in the event that the Investor's holdings of such Common Stock drops below such minimum percentage described in this Section 1.1, the Investor will not regain the right to nominate an Appointee through the acquisition of other shares of Common Stock.

1.2 If the Investor has the right to so nominate an Appointee in a given year, the Company shall, at the Annual Meeting during such year, nominate the Appointee(s) for election to the Board and use reasonable best efforts to cause the Appointee(s) to be elected to the Board; provided, however, that each Appointee shall qualify as independent for NASDAQ listing purposes and the applicable rules and regulations of the SEC, and shall be reasonably acceptable to the Company's Governance and Nominating Committee, which approval shall not be unreasonably withheld, conditioned or delayed. If, following election to the Board, an Appointee resigns, is removed, is not re-elected or is otherwise unable to serve for any reason and the Investor still has the right to nominate such Appointee pursuant to the foregoing Section 1.1, then, subject to compliance with the proviso to the immediately preceding sentence, the Investor shall be entitled to designate a replacement Appointee, and the Company shall use reasonable best efforts to cause such replacement Appointee to be elected to the Board, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board. In the event that the Investor ceases to hold the minimum percentage of the outstanding Common Stock that entitles it to nominate the Appointee as provided above, if requested by the Board, the Investor shall use reasonable efforts to have such Appointee resign as a director. As a pre-condition to the nomination of any Appointee, if requested by the Company, such Appointee shall execute and deliver to the Board an irrevocable letter of resignation to be deemed tendered at the time the Investor is required to use reasonable best efforts to have him or her so resign.

1.3 If the Investor has the right to nominate an Appointee and such proposed Appointee is not elected to the Board, the Investor shall be entitled to continue designating a replacement, subject to the terms of this Section 1.3, until such proposed designee is appointed to the Board (a "Replacement"), and the Company, the Board, and all applicable committees of the Board shall take all necessary actions, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board, to appoint such Replacements to the Board.

1.4 At all times while serving as a member of the Board, each Appointee, as the case may be, will be governed by the same protections and obligations regarding confidentiality, conflicts of interest, related party transactions, fiduciary duties, codes of conduct, trading and disclosure policies, director resignation policy, and other governance guidelines and policies of the Company as other directors, as amended from time to time (collectively, "Company Policies"), and shall have the same rights and benefits, including with respect to insurance, indemnification, compensation and fees, as are applicable to all independent directors of the Company. The Company shall make available to such Appointee copies of all Company Policies not publicly available on the Company's website. At all times while such Appointee is serving as a member of the Board, (i) such Appointee shall not disclose to the Investor or any "Affiliate" or "Associate" (as each is defined in Rule 12b-2 promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of the Investor (collectively and individually, the "Investor Affiliates") or any other person or entity not affiliated with the Company any confidential information of the Company, and (ii) the Investor shall not, and shall cause the Investor Affiliates

not to, seek to obtain confidential information of the Company from any Appointee. Investor, on behalf of itself and the Investor Affiliates, agrees that neither Investor nor any Investor Affiliate may enter into any contract with the Company or any of its subsidiaries without the approval of a majority of the independent and disinterested members of the Board.

1.5 Notwithstanding anything to the contrary in this Agreement, the rights and privileges set forth in this Agreement shall be personal to the Investor and may not be transferred or assigned to any individual, corporation, partnership, limited liability company, joint venture, estate, trust, association, organization or other entity of any kind or nature (each, a "Person") without the express written consent of the other party hereto; provided, that the rights and privileges of the Investor set forth in this Agreement may be transferred to a Permitted Transferee (as defined in the Subscription Agreement) that agrees to be bound by the terms of this Agreement pursuant to a written agreement in form and substance reasonably satisfactory to the Company (a "Successor Affiliate Transferee").

1.6 For purposes of this Agreement, the term "Beneficially Own" or variations thereof shall have the meaning set forth in Rule 13d-3 promulgated under the Exchange Act.

1.7 From and after the date the Investor or its Affiliates no longer have the right to appoint a Board Observer (as defined below) pursuant to the terms of the Loan Agreement and until the date Investor ceases to Beneficially Own at least five percent (5%) of the outstanding Common Stock of the Company, the Company shall cause the Investor to have the right to appoint one (1) individual as a non-voting observer to the Board (such observer, the "Board Observer"), and shall cause the Board Observer to be entitled to attend meetings of the Board and any committee of the Board and to receive all information provided to the members of the Board or its committees (including minutes of previous meetings of the Board or such committees); provided, that (i) the Board Observer shall not be entitled to vote on any matter submitted to the Board or any of its committees nor to offer any motions or resolutions to the Board or such committees; and
(ii) the Board may withhold information or materials from the Board Observer and exclude the Board Observer from any meeting or portion thereof (x) if (as reasonably determined by the Board) access to such information or materials or attendance at such meeting would (A) adversely affect the attorney-client or work product privilege between the Company and its counsel or (B) result in a conflict of interest or is otherwise required to avoid any disclosure that is restricted by any agreement with another Person or (y) when such Board materials or discussion relate directly to the Company's direct or indirect relationship, contractual or otherwise, with Investor or any of its Affiliates, or any actual or potential transactions between or involving any Company or any of its Affiliates, on the one hand, and Investor or any of its Affiliates, on the other. For the avoidance of doubt, the Board Observer (x) shall not constitute a manager and/or member of a Board committee and (y) shall not be entitled to any rights other than those provided by this Section 1.7. Notwithstanding the foregoing, the Board shall not disclose any material non-public information to the Board Observer unless prior to disclosure of such information, the Board identifies such information as being material non-public information and provides the Board Observer with the opportunity to accept or refuse to accept such material non-public information for review. The Company and the Board hereby agree that they will use commercially reasonable efforts to identify that portion of Board materials that do not contain material non-public information and that (i) all such Board materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, and (ii) by

marking Board materials "PUBLIC," the Board shall be deemed to have authorized the Board Observer to treat such Board materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Board, the Company or its securities for purposes of United States federal and state securities laws.

2. Standstill and Voting.

2.1 Except as expressly contemplated by the Subscription Agreement or the Convertible Note (as defined in the Subscription Agreement), the Investor agrees that during the period beginning on the date of this Agreement until the earlier of (a) the later of (i) the two (2) year anniversary of this Agreement, and (ii) the calendar day immediately following the date Investor ceases to Beneficially Own at least five percent (5%) of the outstanding Common Stock of the Company (the "Standstill Period"); or (b) a transaction whereby (i) any Person is or becomes a beneficial owner, directly or indirectly, of securities of the Company representing more than 50% of the equity interests and voting power of the Company's then outstanding equity securities, (ii) the Company effects a merger or a stock-for-stock transaction with a third party whereby immediately after the consummation of the transaction the Company's shareholders retain less than 50% of the equity interests and voting power of the surviving entity's then outstanding equity securities or (ii) the Company sells all or substantially all of the Company's assets to a third party (a "Change of Control"), neither the Investor nor any of its representatives acting on its behalf will (and they will not assist or knowingly encourage others to), directly or indirectly, in any manner, without prior written approval of the Board:

2.1.1 take any action, including by acquiring, or make any announcement or proposal with respect to, seeking to acquire or agreeing to acquire (directly or indirectly, whether by market purchases, private purchases, tender or exchange offer, through the acquisition of control of another person, by joining a "group" (within the meaning of Section 13(d)(3) of the Exchange Act), through swap or hedging transactions or otherwise) any shares of Common Stock (or Beneficial Ownership thereof) or any securities convertible or exchangeable into or exercisable for any shares of Common Stock (or Beneficial Ownership thereof) (including any derivative securities or any other rights decoupled from the underlying securities of the Company) such that the Investor would Beneficially Own in excess of 40% of the Company's outstanding Common Stock;

2.1.2 (A) knowingly encourage, advise or influence any other Person or knowingly assist any third party in so encouraging, assisting or influencing any other Person with respect to the giving or withholding of any proxy, consent or other authority to vote or in conducting any type of referendum (other than such encouragement, advice or influence that is consistent with the Board's recommendation in connection with such matter) or (B) advise, influence or encourage any Person with respect to, or effect or seek to effect, whether alone or in concert with others, the election, nomination or removal of a director other than as permitted by Section 1;

2.1.3 solicit proxies or written consents of shareholders or conduct any other type of referendum (binding or non-binding) (including any "withhold," "vote no" or similar campaign) with respect to the shares of Common Stock, or from the holders of the shares of Common Stock, or become a "participant" (as such term is defined in Instruction 3 to Item 4 of

Schedule 14A promulgated under the Exchange Act) in or knowingly encourage or assist any third party in any "solicitation" of any proxy, consent or other authority (as such terms are defined under the Exchange Act) to vote any shares of Common Stock (other than any encouragement, advice or influence that is consistent with the Board's recommendation in connection with such matter);

2.1.4 (A) form or join in a "group" with respect to any shares of Common Stock (other than a "group" solely consisting of the Investor or Investor Affiliates); provided, that nothing herein shall limit the ability of an Investor Affiliate to join such group following the execution of this Agreement, so long as any such Investor Affiliate agrees to be bound by the terms and conditions of this Agreement, (B) grant any proxy, consent or other authority to vote with respect to any matters to be voted on by the Company's shareholders (other than to the named proxies included in the Company's proxy card for any annual meeting or special meeting of shareholders or in accordance with Section 2.2) or (C) agree to deposit or deposit any shares of Common Stock or any securities convertible or exchangeable into or exercisable for any such shares of Common Stock in any voting trust or similar arrangement (other than (I) to the named proxies included in the Company's proxy card for any Shareholders Meeting, (II) customary brokerage accounts, margin accounts, prime brokerage accounts and the like and (III) any agreement solely among the Investor or Investor Affiliates);

2.1.5 without the approval of the Board, separately or in conjunction with any third party in which it is or proposes to be either a principal, partner or financing source or is acting or proposes to act as broker or agent for compensation, propose (publicly or privately) or effect any tender offer or exchange offer, merger, acquisition, reorganization, restructuring, recapitalization or other business combination involving the Company or a material amount of the assets or businesses of the Company or actively encourage, initiate or support any other third party in any such activity; provided, however, that the Investor and Investor Affiliates shall be permitted to (i) sell or tender their shares of Common Stock, and otherwise receive consideration, pursuant to any such transaction and (ii) vote on any such transaction in accordance with Section 2.2;

2.1.6 present at any annual meeting or any special meeting of the Company's shareholders any proposal for consideration for action by the shareholders;

2.1.7 other than through non-public communications with the Company that would not reasonably be expected to trigger public disclosure obligations for any party, take any action in support of or make any proposal or request that constitutes: (A) any material change in the capitalization, stock repurchase programs and practices or dividend policy of the Company;
(B) any other material change in the Company's management, business or corporate structure; (C) seeking to have the Company waive or make amendments or modifications to the Company's Amended and Restated Charter (except as set forth in Section 1) or the Amended and Restated Bylaws of the Company, or other actions that may impede or facilitate the acquisition of control of the Company by any person; (D) causing a class of securities of the Company to be delisted from, or to cease to be authorized to be quoted on, any securities exchange; or (E) causing a class of securities of the Company to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

2.1.8 encourage, participate in or enter into any agreements, arrangements or understandings with respect to, the taking of any actions by any other Person in connection with the foregoing that is prohibited to be taken by the Investor; or

2.1.9 request that the Company, directly or indirectly, amend or waive any provision of this Section 2 (including this Section 2.1.9), other than through non-public communications with the Company that would not reasonably be expected to trigger public disclosure obligations for any party.

The foregoing provisions of this Section 2.1 shall not be deemed to prevent the Investor from (i) communicating privately with the Board or any of the Company's senior officers regarding any matter, so long as such communications are not intended to, and would not reasonably be expected to, require the Company or the Investor to make public disclosure with respect thereto, (ii) communicating privately with shareholders of the Company and others in a manner that does not otherwise violate this Section 2.1, (iii) taking any action necessary to comply with any law, rule or regulation or any action required by any governmental or regulatory authority or stock exchange that has, or may have, jurisdiction over the Investor, or (iv) taking any action to enforce the Investor's rights hereunder or remedies with respect thereto. Furthermore, for the avoidance of doubt, nothing in this Agreement shall be deemed to restrict in any way the Appointee or a Replacement in the exercise of his or her fiduciary duties under applicable law as a director of the Company.

2.2 At any meeting of the Company's shareholders during the Standstill Period (as defined below) (whether annual or special and whether by vote or by written consent) (each a "Shareholder Meeting"), the Investor shall vote all shares of Common Stock Beneficially Owned by the Investor in accordance with the recommendation of the Board with respect to (i) the election, removal and/or replacement of directors (a "Director Proposal"), (ii) the ratification of the appointment of the Company's independent registered public accounting firm and (iii) any other proposal submitted to the Company's shareholders at a Shareholder Meeting, in each case as such recommendation of the Board is set forth in the applicable definitive proxy statement filed in respect thereof; provided, however, that in the event either Institutional Shareholder Services Inc. ("ISS") and Glass Lewis & Co., LLC ("Glass Lewis") make a recommendation that differs from the recommendation of the Board with respect to any proposal submitted to the shareholders at any Shareholder Meeting (other than Director Proposals), the Investor is permitted to vote the shares of Common Stock Beneficially Owned by the Investor at such Shareholder Meeting in accordance with the ISS and Glass Lewis recommendation; provided, further, that the Investor shall be entitled to vote the shares of Common Stock Beneficially Owned by the Investor in its sole discretion with respect to any proposal relating to: (A) any transaction that would constitute Change of Control, (B) the adoption, amendment or modification of a stock incentive plan or management compensation plan or (C) the issuance of any equity interests or securities requiring shareholder approval, pursuant to Nasdaq listing requirements, or otherwise.

2.3 During the Standstill Period, in the event that the size of the Board is increased, the Investor shall have the right to maintain pro rata representation on the Board. Specifically, if the Board size is increased, the Investor shall be entitled to appoint a number of directors equal to forty percent (40%) of the total number of directors then in office, rounded up to the nearest whole number.

3. Registration Rights.

3.1 Registration Statements.

3.1.1 At any time after the date that is ninety (90) days immediately following the date the Common Stock is issued pursuant to the Subscription Agreement, Investor may request registration of the Registrable Securities with the SEC, which request will specify the number of Registrable Securities intended to be offered and sold and the intended method of disposition of such Registrable Securities, provided that if such request is made with respect to less than all of the Registrable Securities then held by Investor, the Company shall not be obligated to effect an Initial Registration Statement pursuant to this paragraph more than once within any ninety (90) day period. Such registration shall be on Form S-3 (the "Initial Registration Statement") (except if the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) and the Company shall file the Initial Registration Statement as soon as reasonably practicable, but in no event later than thirty (30) days following receipt of such request. The Company shall effect the registration, qualifications and compliances (including, without limitation, the execution of any required undertaking to file post-effective amendments, appropriate qualifications or exemptions under applicable blue sky or other state securities laws and appropriate compliance with applicable securities laws, requirements or regulations) as promptly as practicable after the filing thereof. The Company shall replace any Initial Registration Statement at or before expiration with a successor effective registration statement on Form S-3 (except if the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) to the extent the Investor holds any Registrable Securities. In the event the SEC informs the Company that all of the Registrable Securities intended to be registered on such Initial Registration Statement cannot, as a result of the application of SEC Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly
(a) inform Investor or its transferees that are holders of Registrable Securities under this Agreement and that have agreed to the provisions of this Agreement (Investor and such other transferees, each a "Holder"), (b) use its reasonable efforts to file amendments to the Initial Registration Statement as required by the SEC and/or (c) withdraw the Initial Registration Statement and file a new registration statement (a "New Registration Statement"), in either case covering the maximum number of such Registrable Securities permitted to be registered by the SEC, on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment or New Registration Statement, the Company shall be obligated to use reasonable efforts to advocate with the SEC for the registration of all of the Registrable Securities. In the event the Company amends the Initial Registration Statement or files a New Registration Statement, as the case may be, under clauses (b) or (c) above, the Company will use its reasonable efforts to file with the SEC, as promptly as allowed by the SEC, one or more registration statements on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the "Remainder Registration Statements").

3.1.2 At any time and from time to time while any Registration Statement is in effect, any Holder or group of Holders, as the case may be (each, in such case, a "Takedown

Holder") with Registrable Securities included on such Registration Statement may request to sell all or any portion of its Registrable Securities included thereon in a Public Offering, including an Underwritten Shelf Takedown, that is registered pursuant to such Registration Statement (a "Shelf Takedown"). Any requests for a Shelf Takedown pursuant to this Section 3.1.2 shall be made by giving prior written notice to the Company (a "Shelf Takedown Request"). The Shelf Takedown Request shall specify the approximate number of Registrable Securities to be sold in the Shelf Takedown. Notwithstanding anything to the contrary set forth herein, the Company shall be obligated to effect more than three Underwritten Shelf Takedowns, and shall not be obligated to effect any Underwritten Shelf Takedown unless the anticipated gross proceeds of such underwritten offering is not less than three million dollars ($3,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities).

3.1.3 Promptly upon receipt of a Shelf Takedown Request for any Underwritten Shelf Takedown, the Company shall give written notice of the requested Shelf Takedown (the "Shelf Takedown Offer Notice") to all other Holders with Registrable Securities included on such Shelf Registration Statement and, subject to the provisions of Section 3.1.7 hereof, shall include in the Shelf Takedown all Registrable Securities with respect to which the Company has received written requests for inclusion therein within three (3) business days after the date the Shelf Takedown Offer Notice is given. The request of any Holder (including any Takedown Holder) to participate in an Underwritten Shelf Takedown shall be binding on such Holder. The Company shall, as promptly as reasonably practicable (and in any event within ten (10) business days after the receipt of a Shelf Takedown Request), use reasonable efforts to facilitate such Shelf Takedown. Each Holder agrees that such Holder shall treat as confidential the receipt of the Shelf Takedown Offer Notice and shall not disclose or use the information contained in such Shelf Takedown Offer Notice without the prior written consent of the Company or until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement. Notwithstanding the foregoing, if such Shelf Takedown involves an Underwritten Public Offering, no Holder may participate in any Shelf Takedown unless such Holder agrees to sell their Registrable Securities to the underwriters (if any) selected as provided in Section 3.1.6 on the same terms and conditions as apply to the Takedown Holders.

3.1.4 Notwithstanding the foregoing, if any Takedown Holder(s) whose Registrable Securities are included in the Shelf Registration Statement wish to engage in a Block Sale, then notwithstanding the foregoing time periods, such Takedown Holder(s) shall notify the Company and the other Holders of the Block Sale two (2) full business days prior to the date such offering is to commence, and such other Holders must elect whether or not to participate by the next business day (i.e., one (1) business day prior to the date such offering is to commence), and the Company shall as promptly as reasonably practicable use reasonable efforts to facilitate such offering (which may close as early as two (2) business days after the date it commences).

3.1.5 The Company may, upon giving prompt written notice of such action to the Holders of Registrable Securities registered (or proposed to be registered) thereunder, defer or suspend the continued use of a Registration Statement (a "Shelf Suspension") for a period of up to ninety (90) days if (A) the Board determines in good faith that the offer or sale of any Registrable Securities would materially impede, delay or interfere with any proposed or planned material financing, material acquisition, corporate reorganization, offer or sale of securities or

other similar material transaction involving the Company or any of its subsidiaries, or (B) (i) upon advice of counsel for the Company, the sale of Registrable Securities pursuant to the Shelf Takedown Request would require disclosure of non-public material information not otherwise required to be disclosed under applicable law, and (ii) either (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction or (y) disclosure of such non-public material information would have a material adverse effect on the Company or the Company's ability to consummate such transaction. In the case of a Shelf Suspension, the Holders agree to suspend use of the applicable prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above; provided, that the Company may defer or suspend the continued use of a particular Registration Statement pursuant to this Section 3.1.5 no more than twice in any twelve (12) month period, and for no more than ninety (90) days in the aggregate during any twelve (12) month period. The Company shall promptly notify the Holders of Registrable Securities registered (or proposed to be registered) pursuant to the applicable Registration Statement in writing upon the termination of any Shelf Suspension, and shall, as promptly as reasonably practicable, amend or supplement any applicable prospectus, if necessary, so it does not contain any untrue statement or omission.

3.1.6 In connection with any Underwritten Public Offering conducted pursuant to this Section 3.1, the Holders of a majority of the Registrable Securities to be included in such offering shall have the right to (i) determine the plan of distribution and (ii) select the investment banker or bankers and managers to administer the offering, including the lead managing underwriter.

3.1.7 If the managing underwriters of a proposed Underwritten Shelf Takedown advise the Company in writing that in their opinion the number of securities requested to be included in such Underwritten Shelf Takedown creates a substantial risk that the price per share of securities offered thereby will be reduced, the Company will include in such Underwritten Shelf Takedown all registrable securities requested to be sold by Holders which, in the opinion of the managing underwriters, can be sold without having the adverse effect described above (allocated, if necessary, on a pro rata basis based on the total number of Registrable Securities held by such Holders).

3.1.8 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 3.1 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of each Holder shall be borne by such Holder on the basis of the number of securities so registered.

3.2 Company Obligations. In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform each Holder as to the status of such registration, qualification, exemption and compliance.

3.2.1 At its expense the Company shall:

(a) use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which the Company determines to obtain, continuously effective with respect to a Holder, and to keep the

applicable Registration Statement free of any material misstatements or omissions, until the earlier of the following: (A) the date on which all Registrable Securities have been sold or (B) the date all Common Stock held by such Holder may be sold under SEC Rule 144 without being subject to any volume, manner of sale or publicly available information requirements. The period of time during which the Company is required hereunder to keep a Registration Statement effective is referred to herein as the "Registration Period."

(b) advise the Holders as reasonably promptly as possible:

(i) when a Registration Statement or any amendment thereto has been filed with the SEC and when such Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to any Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading;

(c) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as soon as reasonably practicable;

(d) if a Holder so requests in writing, promptly furnish to each such Holder, without charge, at least one (1) copy of each Registration Statement and each post- effective amendment thereto, including financial statements and schedules, and, if explicitly requested, all exhibits in the form filed with the SEC;

(e) during the Registration Period, promptly deliver to each such Holder, at such Holder's cost and expense, as many copies of each prospectus included in a Registration Statement and any amendment or supplement thereto as such Holder may reasonably request in writing;

(f) prior to any public offering of Registrable Securities pursuant to any Registration Statement, promptly take such actions as may be necessary to register or qualify or obtain an exemption for offer and sale under the securities or blue sky laws of such

United States jurisdictions as any such Holders reasonably request in writing, provided that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by any such Registration Statement;

(g) otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC which could affect the sale of the Registrable Securities;

(h) use its commercially reasonable efforts to cause all Registrable Securities to be listed on each securities exchange or market, if any, on which Common Stock issued by the Company have been listed;

(i) in connection with an Underwritten Public Offering, enter into customary agreements (including an underwriting agreement in customary form), and take all such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Underwritten Public Offering, including the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Company shall make such representations and warranties to the holders of Registrable Securities being registered, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in secondary underwritten public offerings and take any other actions as the Holders of a majority of the Registrable Securities being registered, or the managing underwriters, if any, reasonably request in order to expedite or facilitate the registration and disposition of such Registrable Securities. In the event an Underwritten Public Offering is not consummated because any condition to the obligations under any related written agreement with the underwriters is not met or waived, and such failure to be met or waived is not attributable to the fault of any Holder, such Underwritten Public Offering will not count for purposes of determining when future Shelf Takedowns may be requested by such Holder hereunder;

(j) cause to be furnished to each Holder and each underwriter, if any, in each case, participating in a disposition pursuant to any Registration Statement a signed counterpart, addressed to such Holder or underwriter, of (i) an opinion or opinions and negative assurance letter of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as such Holders holding a majority of such Registrable Securities in the applicable registration or the managing underwriter therefor reasonably requests; provided, that if the Company fails to obtain such opinion(s), negative assurance letter or comfort letter and the relevant offering is abandoned, then such offering will not count for purposes of determining when future Shelf Takedowns may be requested by Holders hereunder;

(k) cooperate with each seller of Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings to be made with FINRA;

(l) have its appropriate officers prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, and otherwise use their commercially reasonable efforts to cooperate as requested by the underwriters in the offering, marketing and selling of the Registrable Securities;

(m) in the case of a Block Sale or other Underwritten Public Offering, use commercially reasonable efforts to cause each director and executive officer of the Company to enter into customary lock-up agreements if so required by the managing Underwriter in accordance with customary underwriting practice; and

(n) use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Registrable Securities contemplated hereby and to enable the Holders to sell Registrable Securities under SEC Rule 144.

3.2.2 So long as the Holders own Registrable Securities, the Company shall use commercially reasonable efforts to continue the listing and trading of the Common Stock on Nasdaq and, in accordance therewith, will use commercially reasonable efforts to comply in all material respects with the Company's reporting, filing and other obligations under the rules and regulations of Nasdaq.

3.3 Indemnification.

3.3.1 To the extent permitted by law, the Company shall indemnify each Holder, such Holder's officers, directors, managers, employees, partners, stockholders, members, trustees, Affiliates, agents and representatives, and any successors and assigns thereof, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which any registration that has been effected pursuant to this Agreement, against all claims, losses, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 3.3.3 below), arising out of or based on any untrue statement (or alleged untrue statement) by the Company of a material fact contained in any registration statement, prospectus, free writing prospectus, any amendment or supplement thereof, or other document incident to any such registration, qualification or compliance or based on any omission (or alleged omission) by the Company to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, or any violation by the Company of any rule or regulation promulgated by the Securities Act applicable to the Company and relating to any action or inaction required of the Company in connection with any such registration, qualification or compliance; provided that the Company will not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by such Holder for use in preparation of any registration statement, prospectus, amendment or supplement; provided further, that the Company will not be liable in any such case to the extent the claim, loss, damage or liability arises out of or is related to the failure of such Holder to comply with the covenants and agreements contained in this Agreement respecting sales of Registrable Securities, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC

at the time any Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a "Final Prospectus"), such indemnity shall not inure to the benefit of any such Holder if a copy of a Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage.

3.3.2 Each Holder will indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 3.3.3 below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, free writing prospectus or any amendment or supplement thereof, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each other Person controlling the Company for reasonable and documented legal and other out-of-pocket expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as incurred, in each case to the extent, but only to the extent, that such untrue statement or omission is made in reliance upon and in conformity with written information furnished to the Company by the Holder expressly for use in any registration statement, prospectus, amendment or supplement; provided that such indemnity shall not inure to the benefit of the Company and its controlling Persons to the extent that such claim, loss, damage or liability results from the fact that a copy of the prospectus was not made available to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, claim, damage or liability.

3.3.3 Each party entitled to indemnification under this Section 3.3 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such Indemnified Party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent (which consent will not be unreasonably withheld). No Indemnifying Party, in its defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

3.3.4 If the indemnification provided for in this Section 3.3 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall, to the extent permitted by applicable law, contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

3.4 Holder Obligations.

3.4.1 Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Registrable Securities so that, as thereafter delivered to the Holders, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, each Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Registration Statement and prospectus contemplated by Section 3.1 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, each Holder shall deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

3.4.2 Each Holder shall suspend, upon request of the Company, any disposition of Registrable Securities pursuant to any Registration Statement and prospectus contemplated by Section 3.1 during no more than two periods of no more than 30 calendar days each during any 12-month period to the extent that the Board determines in good faith that the sale of Registrable Securities under any such Registration Statement would be reasonably likely to cause a violation of the Securities Act or Exchange Act.

3.4.3 As a condition to the inclusion of its Registrable Securities, each Holder shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing, including completing a customary registration statement questionnaire in the form provided by the Company, or as shall be required in connection with any registration referred to in this Section 3.

3.4.4 Each Holder hereby covenants with the Company (a) not to make any sale of the Registrable Securities without effectively causing the prospectus delivery requirements under the Securities Act to be satisfied, and (b) if such Registrable Securities are to be sold by any method or in any transaction other than on a national securities exchange or in the over-the-counter market, in privately negotiated transactions, or in a combination of such methods,

to notify the Company at least five (5) business days prior to the date on which the Holder first offers to sell any such Registrable Securities.

3.5 Piggyback Registrations.

3.5.1 For a period following the issuance of Common Stock pursuant to the Subscription Agreement until Investor and its Affiliates, directly or indirectly, Beneficially Own less than five percent (5%) of the Company's outstanding Common Stock, whenever the Company proposes to register the issuance or sale of any of its Common Stock under the Securities Act for its own account or otherwise, and the registration form to be used by the Company may be used for the registration of the resale of Registrable Securities (each, a "Piggyback Registration") (except for the registrations on Form S-8 or Form S-4 or any successor form thereto) (a "Piggyback Registration Statement"), the Company will give written notice of the filing of such registration statement to the Holders and will use reasonable efforts to include in such registration all Registrable Securities (in accordance with the priorities set forth in Sections 3.5.2 and 3.5.3 below) with respect to which the Company has received written requests for inclusion, which request shall specify the number of such Registrable Securities desired to be registered and be delivered within fifteen (15) days after the delivery of the Company's notice. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration Statement at any time in its sole discretion.

3.5.2 If a Piggyback Registration is an underwritten primary offering on behalf of the Company and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities requested to be included in the registration creates a substantial risk that the price per share of the primary securities will be reduced or that the amount of the primary securities intended to be included on behalf of the Company will be reduced, then the managing underwriter and the Company may exclude securities (including Registrable Securities) from the registration and the underwriting, and the number of securities that may be included in such registration and underwriting shall include: (i) first, any securities that the Company proposes to sell, and (ii) second, on a pro rata basis based on the total number of Registrable Securities held by such Holders, any Registrable Securities proposed to be sold by the Holders.

3.5.3 If a Piggyback Registration is an underwritten secondary offering on behalf of holders of the Company's securities and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in the registration creates a substantial risk that the price per share of securities offered thereby will be reduced, the Company will include in such registration, on a pro rata basis based on the total number of Registrable Securities held by such Holders, any Registrable Securities proposed to be sold by the Holders.

3.5.4 In connection with any underwritten Piggyback Registration initiated by the Company, the Company shall have the right to (i) determine the plan of distribution and (ii) select the investment banker or bankers and managers to administer the offering, including the lead managing underwriter.

3.5.5 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 3.5.1 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of each Holder pursuant to Section 3.5.1 shall be borne by such Holder on the basis of the number of securities so registered.

3.6 Waiver. The rights of the Holders under any provision of this Section 3 may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) or amended by an instrument in writing signed by Investor or Holders holding a majority of the Registrable Securities outstanding at such time.

3.7 Definitions. For purposes of this Section 3:

3.7.1 "Block Sale" means an Underwritten Public Offering not involving any "road show" or other substantial marketing efforts by the underwriters, which is commonly known as a "block trade."

3.7.2 "Public Offering" means the offer and sale of Registrable Securities for cash pursuant to an effective registration statement under the Securities Act (other than a registration statement on Form S-4 or Form S-8 or any successor form).

3.7.3 "Registrable Securities" means the shares of Common Stock purchased by Investor pursuant to the Subscription Agreement or Convertible Note and shares of Common Stock issued as a dividend or other distribution with respect to, in exchange for or in replacement of such shares; provided, however, that securities shall cease to be Registrable Securities if they (a) have been disposed of pursuant to a registration statement declared effective by the SEC, (b) have been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale or (c) are transferred by a Holder in violation of this Agreement or any transfer restrictions set forth in the Subscription Agreement or Convertible Note.

3.7.4 "Registration Expenses" means (a) all expenses incurred by the Company in complying with Section 3.1 and/or Section 3.5 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration, and (b) fees and expenses of one counsel for all Holders, which fees under this clause (b) shall not exceed $30,000 with respect to any particular registration hereunder.

3.7.5 "Registration Statement" means the Initial Registration Statement, any New Registration Statement, any Remainder Registration Statement, or any Remainder Additional Registration Statement.

3.7.6 "Selling Expenses" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities, and all fees and expenses of legal counsel for any Holder in excess of the amount set forth in clause (b) of the definition of Registration Expenses.

3.7.7 "Underwritten Public Offering" means an underwritten Public Offering, including any bought deal or Block Sale to a financial institution conducted as an underwritten Public Offering.

3.7.8 "Underwritten Shelf Takedown" means an Underwritten Public Offering pursuant to an effective Registration Statement.

4. Non-Disparagement. During the Standstill Period, (a) the Investor shall not, and shall cause its directors, officers, partners, members, employees, agents (in each case, acting in such capacity) and Affiliates not to make, or cause to be made, by press release or other public statement to the press or media, any statement or announcement that constitutes an ad hominem attack on, or otherwise disparages (as distinct from objective statements reflecting business criticism), the Company, its officers or its directors or any person who has served as an officer or director of the Company in the past and (b) the Company shall not, and shall cause its directors, officers, partners, members, employees, agents (in each case, acting in such capacity) and Affiliates not to, make, or cause to be made, by press release or other public statement to the press or media, any statement or announcement that constitutes an ad hominem attack on, or otherwise disparages (as distinct from objective statements reflecting business criticism), the Investor. The foregoing shall not prevent the making of any factual statement including in any compelled testimony or production of information, either by legal process, subpoena, or as part of a response to a request for information from any governmental authority with purported jurisdiction over the party from whom information is sought.

5. Director Information. As a condition to the Appointee's or the Replacement's appointment to the Board and any subsequent nomination for election as a director at a subsequent Annual Meeting, the Appointee (including any Replacement, as the case may be) will provide any information the Company reasonably requires, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and will consent to appropriate background checks, to the extent, in each case, consistent with the information and background checks required by the Company in accordance with past practice with respect to other members of the Board. If, following the completion of the Company's initial background review process, the Board learns that the Appointee (including any Replacement, as the case may be) has committed, been indicted or charged with, or made a plea of *nolo contendre* to a felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, then the Board may request that the Appointee or the Replacement, as the case may be, resign from the Board and, in such case, the resulting vacancy shall be filled in the manner set forth in Section 1.3 of this Agreement.

6. Representations and Warranties.

6.1 The Company represents and warrants to the Investor that: (a) the Company has the requisite corporate power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind it hereto and thereto; (b) this Agreement has been duly and validly authorized, executed and delivered by the Company, constitutes a valid and binding obligation and agreement of the Company and is enforceable against the Company in accordance with its terms, except as enforcement thereof may

be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; and (c) the execution, delivery and performance of this Agreement by the Company does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to the Company or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could constitute such a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which the Company is a party or by which it is bound.

6.2 The Investor represents and warrants to the Company that: (a) the Investor and the authorized signatory of the Investor set forth on the signature page hereto has the requisite power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind it hereto and thereto; (b) this Agreement has been duly authorized, executed and delivered by the Investor, constitutes a valid and binding obligation and agreement of the Investor and is enforceable against the Investor in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; (c) the execution, delivery and performance of this Agreement by the Investor does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to the Investor or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could constitute such a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which the Investor is a party or by which it is bound; and (d) as of the date of this Agreement, (i) the Investor has no equity interest in, or rights or securities to acquire through exercise, conversion or otherwise, any equity interest in the Company except pursuant to the Subscription Agreement and Convertible Note (as defined in the Subscription Agreement) and (iii) the Investor is not a party to any swap or hedging transactions or other derivative agreements of any nature with respect to any shares of Common Stock.

7. Expenses. Except as otherwise set forth herein, in the Subscription Agreement or the Loan Agreement (as defined in the Subscription Agreement), each Party to this Agreement shall bear and pay all fees, costs and expenses that have been incurred or that are incurred in the future by such Party in connection with, relating to or resulting from such Party's efforts and actions, and any preparations therefor, prior to the execution and delivery of this Agreement.

8. Amendment in Writing. This Agreement and each of its terms may only be amended, waived, supplemented or modified in a writing signed by the signatories hereto.

9. Governing Law/Venue/Waiver of Jury Trial/Jurisdiction.

9.1 This Agreement shall be governed by, and construed in accordance with, the laws of the state of Delaware, without giving effect to any choice of law or conflict of law rules or

provisions (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Delaware.

9.2 Any dispute relating hereto shall be heard first in the Chancery Court for the State of Delaware or, if unavailable, the federal court in the State of Delaware, and, if applicable, in any state or federal court located in the State of Delaware in which appeal from such courts may validly be taken (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. The parties hereto further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and each of the foregoing parties hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such party may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

9.3 The parties hereto further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

9.4 Process in any such proceeding may be served on any party hereto with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 14 shall be deemed effective service of process on such Person.

9.5 Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10. Specific Performance. The Parties expressly agree that an actual or threatened breach of this Agreement by any Party will give rise to irreparable injury that cannot adequately be compensated by damages. Accordingly, in addition to any other remedy to which it may be entitled, each Party shall be entitled to a temporary restraining order or injunctive relief to prevent a breach of the provisions of this Agreement or to secure specific enforcement of its terms and provisions, and each Party agrees it will not take any action, directly or indirectly, in opposition to another Party seeking relief. Each of the Parties agrees to waive any requirement for the security or posting of any bond in connection with any such relief.

11. Severability. If at any time subsequent to the date hereof, any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable,

such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon the legality or enforceability of any other provision of this Agreement.

12. Non-Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

13. Entire Agreement. This Agreement constitutes the full, complete and entire understanding, agreement, and arrangement of and between the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written understandings, agreements and arrangements between them. There are no other agreements, covenants, promises or arrangements between the Parties other than those set forth in this Agreement (including the attachments hereto).

14. Notice. All notices and other communications which are required or permitted hereunder shall be in writing and shall be deemed validly given, made or served, when delivered in person or sent by overnight courier, when actually received during normal business hours, or upon confirmation of receipt when sent by e-mail (provided that such confirmation is not automatically generated), at the address specified in this Section 14:

If to the Company:

Kirkland's, Inc. 5310 Maryland Way
Brentwood, Tennessee 37027
Attention: Amy Sullivan, President, Chief Executive Officer E-mail: Amy.Sullivan@kirklands.com

with a copy, which will not constitute notice, to: Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201 Attention: John Fuller

Email: jfuller@bassberry.com If to the Investor:

Beyond, Inc.
799 W. Coliseum Way Midvale, UT 84047 Attention: E. Glen Nickle, Chief Legal Officer Email: gnickle@beyond.com

with a copy, which will not constitute notice, to: Latham & Watkins LLP

330 North Wabash Avenue Chicago, Illinois 60611
Attention: Zachary Judd; Matthew Galligan Email: zachary.judd@lw.com
matthew.galligan@lw.com

15. Further Assurances. The Investor and the Company agree to take, or cause to be taken, all such further or other actions as shall reasonably be necessary to make effective and consummate the transactions contemplated by this Agreement.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties. Any purported transfer requiring consent without such consent shall be void.

17. No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and is not enforceable by any other Person.

18. Interpretation. Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each Party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged among the Parties shall be deemed the work product of all of the Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is hereby expressly waived by each of the Parties, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation.

19. Counterparts. This Agreement may be executed by the Parties in separate counterparts (including by fax, jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

[*The remainder of this page is left blank intentionally.*]

IN WITNESS WHEREOF, the Parties hereto have each executed this Agreement on the date set forth below.

Dated: October [●], 2024

KIRKLAND'S, INC.

By: __
Name: [●]
Title: [●]

BEYOND, INC.

By: __
Name: [●]
Title: [●]

Exhibit 10.20

Execution Version

EXHIBIT B

FORM OF INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "Agreement") is made by and between Kirkland's, Inc., a Tennessee corporation (the "Company") and Beyond, Inc., a Delaware corporation (the "Investor") on behalf of themselves and their respective Affiliates (as defined below) (the Company and the Investor together, collectively, the "Parties").

WHEREAS, contemporaneously herewith, the Company and the Investor entered into a subscription agreement (the "Subscription Agreement") pursuant to which Investor agreed to purchase, and the Company agreed to issue to Investor, shares of common stock, no par value (the "Common Stock"), of the Company, subject to the terms and conditions therein, including obtaining Shareholder Approval (as defined in the Subscription Agreement, "Shareholder Approval");

WHEREAS, as a condition to the entry into the Subscription Agreement by the Parties, the Parties have determined that it is in their respective best interests to come to an agreement with respect to the appointment by Investor of one or more nominees to the Company's Board of Directors (the "Board") and certain other matters, as provided in this Agreement; and

NOW, THEREFORE, in consideration of and reliance upon the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Board Matters & Voting.

1.1 Investor shall, subject to and effective immediately following Shareholder Approval and the issuance of the Common Stock pursuant to the Subscription Agreement (the "Effective Date") have the right to designate (i) two (2) persons for appointment to the Board so long as the Investor continues to Beneficially Own (as defined below) in the aggregate at least twenty percent (20%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments), or (ii) one (1) person for appointment to the Board so long as the Investor continues to Beneficially Own (as defined below) in the aggregate more than five percent (5%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments) but less than the percentage specified above in clause (i), in each case, each of whom shall qualify as independent for NASDAQ listing purposes and the applicable rules and regulations of the Securities and Exchange Commission ("SEC") (each, an "Appointee"); provided, however, for the avoidance of doubt, if the Investor ceases to Beneficially Own (as defined below) in the aggregate at least five percent (5%) of the Company's then outstanding Common Stock (subject to adjustment for reclassification and other equitable adjustments), the right to designate an Appointee to the Board pursuant to this Agreement shall terminate. Promptly following the Effective Date, (i) two (2) existing directors of the Company shall resign from the Board, and (ii) the Company, the Board, and all applicable committees of the Board shall take all necessary actions, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board, to appoint the Appointees designated by the Investor as directors of the Company with a term expiring at the

Company's next annual meeting of shareholders (the "Annual Meeting"). For the avoidance of doubt, in the event that the Investor's holdings of such Common Stock drops below such minimum percentage described in this Section 1.1, the Investor will not regain the right to nominate an Appointee through the acquisition of other shares of Common Stock.

1.2 If the Investor has the right to so nominate an Appointee in a given year, the Company shall, at the Annual Meeting during such year, nominate the Appointee(s) for election to the Board and use reasonable best efforts to cause the Appointee(s) to be elected to the Board; provided, however, that each Appointee shall qualify as independent for NASDAQ listing purposes and the applicable rules and regulations of the SEC, and shall be reasonably acceptable to the Company's Governance and Nominating Committee, which approval shall not be unreasonably withheld, conditioned or delayed. If, following election to the Board, an Appointee resigns, is removed, is not re-elected or is otherwise unable to serve for any reason and the Investor still has the right to nominate such Appointee pursuant to the foregoing Section 1.1, then, subject to compliance with the proviso to the immediately preceding sentence, the Investor shall be entitled to designate a replacement Appointee, and the Company shall use reasonable best efforts to cause such replacement Appointee to be elected to the Board, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board. In the event that the Investor ceases to hold the minimum percentage of the outstanding Common Stock that entitles it to nominate the Appointee as provided above, if requested by the Board, the Investor shall use reasonable efforts to have such Appointee resign as a director. As a pre-condition to the nomination of any Appointee, if requested by the Company, such Appointee shall execute and deliver to the Board an irrevocable letter of resignation to be deemed tendered at the time the Investor is required to use reasonable best efforts to have him or her so resign.

1.3 If the Investor has the right to nominate an Appointee and such proposed Appointee is not elected to the Board, the Investor shall be entitled to continue designating a replacement, subject to the terms of this Section 1.3, until such proposed designee is appointed to the Board (a "Replacement"), and the Company, the Board, and all applicable committees of the Board shall take all necessary actions, including but not limited to calling a meeting of the Board or executing an action by unanimous written consent of the Board, to appoint such Replacements to the Board.

1.4 At all times while serving as a member of the Board, each Appointee, as the case may be, will be governed by the same protections and obligations regarding confidentiality, conflicts of interest, related party transactions, fiduciary duties, codes of conduct, trading and disclosure policies, director resignation policy, and other governance guidelines and policies of the Company as other directors, as amended from time to time (collectively, "Company Policies"), and shall have the same rights and benefits, including with respect to insurance, indemnification, compensation and fees, as are applicable to all independent directors of the Company. The Company shall make available to such Appointee copies of all Company Policies not publicly available on the Company's website. At all times while such Appointee is serving as a member of the Board, (i) such Appointee shall not disclose to the Investor or any "Affiliate" or "Associate" (as each is defined in Rule 12b-2 promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of the Investor (collectively and individually, the "Investor Affiliates") or any other person or entity not affiliated with the Company any confidential information of the Company, and (ii) the Investor shall not, and shall cause the

Investor Affiliates not to, seek to obtain confidential information of the Company from any Appointee. Investor, on behalf of itself and the Investor Affiliates, agrees that neither Investor nor any Investor Affiliate may enter into any contract with the Company or any of its subsidiaries without the approval of a majority of the independent and disinterested members of the Board.

1.5 Notwithstanding anything to the contrary in this Agreement, the rights and privileges set forth in this Agreement shall be personal to the Investor and may not be transferred or assigned to any individual, corporation, partnership, limited liability company, joint venture, estate, trust, association, organization or other entity of any kind or nature (each, a "Person") without the express written consent of the other party hereto; provided, that the rights and privileges of the Investor set forth in this Agreement may be transferred to a Permitted Transferee (as defined in the Subscription Agreement) that agrees to be bound by the terms of this Agreement pursuant to a written agreement in form and substance reasonably satisfactory to the Company (a "Successor Affiliate Transferee").

1.6 For purposes of this Agreement, the term "Beneficially Own" or variations thereof shall have the meaning set forth in Rule 13d-3 promulgated under the Exchange Act.

1.7 From and after the date the Investor or its Affiliates no longer have the right to appoint a Board Observer (as defined below) pursuant to the terms of the Loan Agreement and until the date Investor ceases to Beneficially Own at least five percent (5%) of the outstanding Common Stock of the Company, the Company shall cause the Investor to have the right to appoint one (1) individual as a non-voting observer to the Board (such observer, the "Board Observer"), and shall cause the Board Observer to be entitled to attend meetings of the Board and any committee of the Board and to receive all information provided to the members of the Board or its committees (including minutes of previous meetings of the Board or such committees); provided, that (i) the Board Observer shall not be entitled to vote on any matter submitted to the Board or any of its committees nor to offer any motions or resolutions to the Board or such committees; and
(ii) the Board may withhold information or materials from the Board Observer and exclude the Board Observer from any meeting or portion thereof (x) if (as reasonably determined by the Board) access to such information or materials or attendance at such meeting would (A) adversely affect the attorney-client or work product privilege between the Company and its counsel or (B) result in a conflict of interest or is otherwise required to avoid any disclosure that is restricted by any agreement with another Person or (y) when such Board materials or discussion relate directly to the Company's direct or indirect relationship, contractual or otherwise, with Investor or any of its Affiliates, or any actual or potential transactions between or involving any Company or any of its Affiliates, on the one hand, and Investor or any of its Affiliates, on the other. For the avoidance of doubt, the Board Observer (x) shall not constitute a manager and/or member of a Board committee and (y) shall not be entitled to any rights other than those provided by this Section 1.7. Notwithstanding the foregoing, the Board shall not disclose any material non-public information to the Board Observer unless prior to disclosure of such information, the Board identifies such information as being material non-public information and provides the Board Observer with the opportunity to accept or refuse to accept such material non-public information for review. The Company and the Board hereby agree that they will use commercially reasonable efforts to identify that portion of Board materials that do not contain material non-public information and that (i) all such Board materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, and (ii) by

marking Board materials "PUBLIC," the Board shall be deemed to have authorized the Board Observer to treat such Board materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Board, the Company or its securities for purposes of United States federal and state securities laws.

2. Standstill and Voting.

2.1 Except as expressly contemplated by the Subscription Agreement or the Convertible Note (as defined in the Subscription Agreement), the Investor agrees that during the period beginning on the date of this Agreement until the earlier of (a) the later of (i) the two (2) year anniversary of this Agreement, and (ii) the calendar day immediately following the date Investor ceases to Beneficially Own at least five percent (5%) of the outstanding Common Stock of the Company (the "Standstill Period"); or (b) a transaction whereby (i) any Person is or becomes a beneficial owner, directly or indirectly, of securities of the Company representing more than 50% of the equity interests and voting power of the Company's then outstanding equity securities, (ii) the Company effects a merger or a stock-for-stock transaction with a third party whereby immediately after the consummation of the transaction the Company's shareholders retain less than 50% of the equity interests and voting power of the surviving entity's then outstanding equity securities or (ii) the Company sells all or substantially all of the Company's assets to a third party (a "Change of Control"), neither the Investor nor any of its representatives acting on its behalf will (and they will not assist or knowingly encourage others to), directly or indirectly, in any manner, without prior written approval of the Board:

2.1.1 take any action, including by acquiring, or make any announcement or proposal with respect to, seeking to acquire or agreeing to acquire (directly or indirectly, whether by market purchases, private purchases, tender or exchange offer, through the acquisition of control of another person, by joining a "group" (within the meaning of Section 13(d)(3) of the Exchange Act), through swap or hedging transactions or otherwise) any shares of Common Stock (or Beneficial Ownership thereof) or any securities convertible or exchangeable into or exercisable for any shares of Common Stock (or Beneficial Ownership thereof) (including any derivative securities or any other rights decoupled from the underlying securities of the Company) such that the Investor would Beneficially Own in excess of 40% of the Company's outstanding Common Stock;

2.1.2 (A) knowingly encourage, advise or influence any other Person or knowingly assist any third party in so encouraging, assisting or influencing any other Person with respect to the giving or withholding of any proxy, consent or other authority to vote or in conducting any type of referendum (other than such encouragement, advice or influence that is consistent with the Board's recommendation in connection with such matter) or (B) advise, influence or encourage any Person with respect to, or effect or seek to effect, whether alone or in concert with others, the election, nomination or removal of a director other than as permitted by Section 1;

2.1.3 solicit proxies or written consents of shareholders or conduct any other type of referendum (binding or non-binding) (including any "withhold," "vote no" or similar campaign) with respect to the shares of Common Stock, or from the holders of the shares of Common Stock, or become a "participant" (as such term is defined in Instruction 3 to Item 4 of

Schedule 14A promulgated under the Exchange Act) in or knowingly encourage or assist any third party in any "solicitation" of any proxy, consent or other authority (as such terms are defined under the Exchange Act) to vote any shares of Common Stock (other than any encouragement, advice or influence that is consistent with the Board's recommendation in connection with such matter);

2.1.4 (A) form or join in a "group" with respect to any shares of Common Stock (other than a "group" solely consisting of the Investor or Investor Affiliates); provided, that nothing herein shall limit the ability of an Investor Affiliate to join such group following the execution of this Agreement, so long as any such Investor Affiliate agrees to be bound by the terms and conditions of this Agreement, (B) grant any proxy, consent or other authority to vote with respect to any matters to be voted on by the Company's shareholders (other than to the named proxies included in the Company's proxy card for any annual meeting or special meeting of shareholders or in accordance with Section 2.2) or (C) agree to deposit or deposit any shares of Common Stock or any securities convertible or exchangeable into or exercisable for any such shares of Common Stock in any voting trust or similar arrangement (other than (I) to the named proxies included in the Company's proxy card for any Shareholders Meeting, (II) customary brokerage accounts, margin accounts, prime brokerage accounts and the like and (III) any agreement solely among the Investor or Investor Affiliates);

2.1.5 without the approval of the Board, separately or in conjunction with any third party in which it is or proposes to be either a principal, partner or financing source or is acting or proposes to act as broker or agent for compensation, propose (publicly or privately) or effect any tender offer or exchange offer, merger, acquisition, reorganization, restructuring, recapitalization or other business combination involving the Company or a material amount of the assets or businesses of the Company or actively encourage, initiate or support any other third party in any such activity; provided, however, that the Investor and Investor Affiliates shall be permitted to (i) sell or tender their shares of Common Stock, and otherwise receive consideration, pursuant to any such transaction and (ii) vote on any such transaction in accordance with Section 2.2;

2.1.6 present at any annual meeting or any special meeting of the Company's shareholders any proposal for consideration for action by the shareholders;

2.1.7 other than through non-public communications with the Company that would not reasonably be expected to trigger public disclosure obligations for any party, take any action in support of or make any proposal or request that constitutes: (A) any material change in the capitalization, stock repurchase programs and practices or dividend policy of the Company;
(B) any other material change in the Company's management, business or corporate structure; (C) seeking to have the Company waive or make amendments or modifications to the Company's Amended and Restated Charter (except as set forth in Section 1) or the Amended and Restated Bylaws of the Company, or other actions that may impede or facilitate the acquisition of control of the Company by any person; (D) causing a class of securities of the Company to be delisted from, or to cease to be authorized to be quoted on, any securities exchange; or (E) causing a class of securities of the Company to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

2.1.8 encourage, participate in or enter into any agreements, arrangements or understandings with respect to, the taking of any actions by any other Person in connection with the foregoing that is prohibited to be taken by the Investor; or

2.1.9 request that the Company, directly or indirectly, amend or waive any provision of this Section 2 (including this Section 2.1.9), other than through non-public communications with the Company that would not reasonably be expected to trigger public disclosure obligations for any party.

The foregoing provisions of this Section 2.1 shall not be deemed to prevent the Investor from (i) communicating privately with the Board or any of the Company's senior officers regarding any matter, so long as such communications are not intended to, and would not reasonably be expected to, require the Company or the Investor to make public disclosure with respect thereto, (ii) communicating privately with shareholders of the Company and others in a manner that does not otherwise violate this Section 2.1, (iii) taking any action necessary to comply with any law, rule or regulation or any action required by any governmental or regulatory authority or stock exchange that has, or may have, jurisdiction over the Investor, or (iv) taking any action to enforce the Investor's rights hereunder or remedies with respect thereto. Furthermore, for the avoidance of doubt, nothing in this Agreement shall be deemed to restrict in any way the Appointee or a Replacement in the exercise of his or her fiduciary duties under applicable law as a director of the Company.

2.2 At any meeting of the Company's shareholders during the Standstill Period (as defined below) (whether annual or special and whether by vote or by written consent) (each a "Shareholder Meeting"), the Investor shall vote all shares of Common Stock Beneficially Owned by the Investor in accordance with the recommendation of the Board with respect to (i) the election, removal and/or replacement of directors (a "Director Proposal"), (ii) the ratification of the appointment of the Company's independent registered public accounting firm and (iii) any other proposal submitted to the Company's shareholders at a Shareholder Meeting, in each case as such recommendation of the Board is set forth in the applicable definitive proxy statement filed in respect thereof; provided, however, that in the event either Institutional Shareholder Services Inc. ("ISS") and Glass Lewis & Co., LLC ("Glass Lewis") make a recommendation that differs from the recommendation of the Board with respect to any proposal submitted to the shareholders at any Shareholder Meeting (other than Director Proposals), the Investor is permitted to vote the shares of Common Stock Beneficially Owned by the Investor at such Shareholder Meeting in accordance with the ISS and Glass Lewis recommendation; provided, further, that the Investor shall be entitled to vote the shares of Common Stock Beneficially Owned by the Investor in its sole discretion with respect to any proposal relating to: (A) any transaction that would constitute Change of Control, (B) the adoption, amendment or modification of a stock incentive plan or management compensation plan or (C) the issuance of any equity interests or securities requiring shareholder approval, pursuant to Nasdaq listing requirements, or otherwise.

2.3 During the Standstill Period, in the event that the size of the Board is increased, the Investor shall have the right to maintain pro rata representation on the Board. Specifically, if the Board size is increased, the Investor shall be entitled to appoint a number of directors equal to forty percent (40%) of the total number of directors then in office, rounded up to the nearest whole number.

3. Registration Rights.

3.1 Registration Statements.

3.1.1 At any time after the date that is ninety (90) days immediately following the date the Common Stock is issued pursuant to the Subscription Agreement, Investor may request registration of the Registrable Securities with the SEC, which request will specify the number of Registrable Securities intended to be offered and sold and the intended method of disposition of such Registrable Securities, provided that if such request is made with respect to less than all of the Registrable Securities then held by Investor, the Company shall not be obligated to effect an Initial Registration Statement pursuant to this paragraph more than once within any ninety (90) day period. Such registration shall be on Form S-3 (the "Initial Registration Statement") (except if the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) and the Company shall file the Initial Registration Statement as soon as reasonably practicable, but in no event later than thirty (30) days following receipt of such request. The Company shall effect the registration, qualifications and compliances (including, without limitation, the execution of any required undertaking to file post-effective amendments, appropriate qualifications or exemptions under applicable blue sky or other state securities laws and appropriate compliance with applicable securities laws, requirements or regulations) as promptly as practicable after the filing thereof. The Company shall replace any Initial Registration Statement at or before expiration with a successor effective registration statement on Form S-3 (except if the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) to the extent the Investor holds any Registrable Securities. In the event the SEC informs the Company that all of the Registrable Securities intended to be registered on such Initial Registration Statement cannot, as a result of the application of SEC Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly
(a) inform Investor or its transferees that are holders of Registrable Securities under this Agreement and that have agreed to the provisions of this Agreement (Investor and such other transferees, each a "Holder"), (b) use its reasonable efforts to file amendments to the Initial Registration Statement as required by the SEC and/or (c) withdraw the Initial Registration Statement and file a new registration statement (a "New Registration Statement"), in either case covering the maximum number of such Registrable Securities permitted to be registered by the SEC, on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment or New Registration Statement, the Company shall be obligated to use reasonable efforts to advocate with the SEC for the registration of all of the Registrable Securities. In the event the Company amends the Initial Registration Statement or files a New Registration Statement, as the case may be, under clauses
(b) or (c) above, the Company will use its reasonable efforts to file with the SEC, as promptly as allowed by the SEC, one or more registration statements on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the "Remainder Registration Statements").

3.1.2 At any time and from time to time while any Registration Statement is in effect, any Holder or group of Holders, as the case may be (each, in such case, a "Takedown Holder") with Registrable Securities included on such Registration Statement may request to sell all or any portion of its Registrable Securities included thereon in a Public Offering, including an Underwritten Shelf Takedown, that is registered pursuant to such Registration Statement (a "Shelf Takedown"). Any requests for a Shelf Takedown pursuant to this Section 3.1.2 shall be made by giving prior written notice to the Company (a "Shelf Takedown Request"). The Shelf Takedown Request shall specify the approximate number of Registrable Securities to be sold in the Shelf Takedown. Notwithstanding anything to the contrary set forth herein, the Company shall be obligated to effect more than three Underwritten Shelf Takedowns, and shall not be obligated to effect any Underwritten Shelf Takedown unless the anticipated gross proceeds of such underwritten offering is not less than three million dollars ($3,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities).

3.1.3 Promptly upon receipt of a Shelf Takedown Request for any Underwritten Shelf Takedown, the Company shall give written notice of the requested Shelf Takedown (the "Shelf Takedown Offer Notice") to all other Holders with Registrable Securities included on such Shelf Registration Statement and, subject to the provisions of Section 3.1.7 hereof, shall include in the Shelf Takedown all Registrable Securities with respect to which the Company has received written requests for inclusion therein within three (3) business days after the date the Shelf Takedown Offer Notice is given. The request of any Holder (including any Takedown Holder) to participate in an Underwritten Shelf Takedown shall be binding on such Holder. The Company shall, as promptly as reasonably practicable (and in any event within ten (10) business days after the receipt of a Shelf Takedown Request), use reasonable efforts to facilitate such Shelf Takedown. Each Holder agrees that such Holder shall treat as confidential the receipt of the Shelf Takedown Offer Notice and shall not disclose or use the information contained in such Shelf Takedown Offer Notice without the prior written consent of the Company or until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement. Notwithstanding the foregoing, if such Shelf Takedown involves an Underwritten Public Offering, no Holder may participate in any Shelf Takedown unless such Holder agrees to sell their Registrable Securities to the underwriters (if any) selected as provided in Section 3.1.6 on the same terms and conditions as apply to the Takedown Holders.

3.1.4 Notwithstanding the foregoing, if any Takedown Holder(s) whose Registrable Securities are included in the Shelf Registration Statement wish to engage in a Block Sale, then notwithstanding the foregoing time periods, such Takedown Holder(s) shall notify the Company and the other Holders of the Block Sale two (2) full business days prior to the date such offering is to commence, and such other Holders must elect whether or not to participate by the next business day (i.e., one (1) business day prior to the date such offering is to commence), and the Company shall as promptly as reasonably practicable use reasonable efforts to facilitate such offering (which may close as early as two (2) business days after the date it commences).

3.1.5 The Company may, upon giving prompt written notice of such action to the Holders of Registrable Securities registered (or proposed to be registered) thereunder, defer or suspend the continued use of a Registration Statement (a "Shelf Suspension") for a period of up to ninety (90) days if (A) the Board determines in good faith that the offer or sale of any

Registrable Securities would materially impede, delay or interfere with any proposed or planned material financing, material acquisition, corporate reorganization, offer or sale of securities or other similar material transaction involving the Company or any of its subsidiaries, or (B) (i) upon advice of counsel for the Company, the sale of Registrable Securities pursuant to the Shelf Takedown Request would require disclosure of non-public material information not otherwise required to be disclosed under applicable law, and (ii) either (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction or (y) disclosure of such non-public material information would have a material adverse effect on the Company or the Company's ability to consummate such transaction. In the case of a Shelf Suspension, the Holders agree to suspend use of the applicable prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above; provided, that the Company may defer or suspend the continued use of a particular Registration Statement pursuant to this Section 3.1.5 no more than twice in any twelve (12) month period, and for no more than ninety (90) days in the aggregate during any twelve (12) month period. The Company shall promptly notify the Holders of Registrable Securities registered (or proposed to be registered) pursuant to the applicable Registration Statement in writing upon the termination of any Shelf Suspension, and shall, as promptly as reasonably practicable, amend or supplement any applicable prospectus, if necessary, so it does not contain any untrue statement or omission.

3.1.6 In connection with any Underwritten Public Offering conducted pursuant to this Section 3.1, the Holders of a majority of the Registrable Securities to be included in such offering shall have the right to (i) determine the plan of distribution and (ii) select the investment banker or bankers and managers to administer the offering, including the lead managing underwriter.

3.1.7 If the managing underwriters of a proposed Underwritten Shelf Takedown advise the Company in writing that in their opinion the number of securities requested to be included in such Underwritten Shelf Takedown creates a substantial risk that the price per share of securities offered thereby will be reduced, the Company will include in such Underwritten Shelf Takedown all registrable securities requested to be sold by Holders which, in the opinion of the managing underwriters, can be sold without having the adverse effect described above (allocated, if necessary, on a pro rata basis based on the total number of Registrable Securities held by such Holders).

3.1.8 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 3.1 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of each Holder shall be borne by such Holder on the basis of the number of securities so registered.

3.2 Company Obligations. In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform each Holder as to the status of such registration, qualification, exemption and compliance.

3.2.1 At its expense the Company shall:

(a) use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which the Company determines to obtain, continuously effective with respect to a Holder, and to keep the applicable Registration Statement free of any material misstatements or omissions, until the earlier of the following: (A) the date on which all Registrable Securities have been sold or (B) the date all Common Stock held by such Holder may be sold under SEC Rule 144 without being subject to any volume, manner of sale or publicly available information requirements. The period of time during which the Company is required hereunder to keep a Registration Statement effective is referred to herein as the "Registration Period."

(b) advise the Holders as reasonably promptly as possible:

(i) when a Registration Statement or any amendment thereto has been filed with the SEC and when such Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to any Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading;

(c) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as soon as reasonably practicable;

(d) if a Holder so requests in writing, promptly furnish to each such Holder, without charge, at least one (1) copy of each Registration Statement and each post- effective amendment thereto, including financial statements and schedules, and, if explicitly requested, all exhibits in the form filed with the SEC;

(e) during the Registration Period, promptly deliver to each such Holder, at such Holder's cost and expense, as many copies of each prospectus included in a Registration Statement and any amendment or supplement thereto as such Holder may reasonably request in writing;

(f) prior to any public offering of Registrable Securities pursuant to any Registration Statement, promptly take such actions as may be necessary to register or qualify or obtain an exemption for offer and sale under the securities or blue sky laws of such United States jurisdictions as any such Holders reasonably request in writing, provided that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by any such Registration Statement;

(g) otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC which could affect the sale of the Registrable Securities;

(h) use its commercially reasonable efforts to cause all Registrable Securities to be listed on each securities exchange or market, if any, on which Common Stock issued by the Company have been listed;

(i) in connection with an Underwritten Public Offering, enter into customary agreements (including an underwriting agreement in customary form), and take all such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Underwritten Public Offering, including the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Company shall make such representations and warranties to the holders of Registrable Securities being registered, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in secondary underwritten public offerings and take any other actions as the Holders of a majority of the Registrable Securities being registered, or the managing underwriters, if any, reasonably request in order to expedite or facilitate the registration and disposition of such Registrable Securities. In the event an Underwritten Public Offering is not consummated because any condition to the obligations under any related written agreement with the underwriters is not met or waived, and such failure to be met or waived is not attributable to the fault of any Holder, such Underwritten Public Offering will not count for purposes of determining when future Shelf Takedowns may be requested by such Holder hereunder;

(j) cause to be furnished to each Holder and each underwriter, if any, in each case, participating in a disposition pursuant to any Registration Statement a signed counterpart, addressed to such Holder or underwriter, of (i) an opinion or opinions and negative assurance letter of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as such Holders holding a majority of such Registrable Securities in the applicable registration or the managing underwriter therefor reasonably requests; provided, that if the Company fails to obtain such opinion(s), negative assurance letter or comfort letter and the relevant offering is abandoned, then such offering will not count for purposes of determining when future Shelf Takedowns may be requested by Holders hereunder;

(k) cooperate with each seller of Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings to be made with FINRA;

(l) have its appropriate officers prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, and otherwise use their commercially reasonable efforts to cooperate as requested by the underwriters in the offering, marketing and selling of the Registrable Securities;

(m) in the case of a Block Sale or other Underwritten Public Offering, use commercially reasonable efforts to cause each director and executive officer of the Company to enter into customary lock-up agreements if so required by the managing Underwriter in accordance with customary underwriting practice; and

(n) use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Registrable Securities contemplated hereby and to enable the Holders to sell Registrable Securities under SEC Rule 144.

3.2.2 So long as the Holders own Registrable Securities, the Company shall use commercially reasonable efforts to continue the listing and trading of the Common Stock on Nasdaq and, in accordance therewith, will use commercially reasonable efforts to comply in all material respects with the Company's reporting, filing and other obligations under the rules and regulations of Nasdaq.

3.3 Indemnification.

3.3.1 To the extent permitted by law, the Company shall indemnify each Holder, such Holder's officers, directors, managers, employees, partners, stockholders, members, trustees, Affiliates, agents and representatives, and any successors and assigns thereof, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which any registration that has been effected pursuant to this Agreement, against all claims, losses, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 3.3.3 below), arising out of or based on any untrue statement (or alleged untrue statement) by the Company of a material fact contained in any registration statement, prospectus, free writing prospectus, any amendment or supplement thereof, or other document incident to any such registration, qualification or compliance or based on any omission (or alleged omission) by the Company to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, or any violation by the Company of any rule or regulation promulgated by the Securities Act applicable to the Company and relating to any action or inaction required of the Company in connection with any such registration, qualification or compliance; provided that the Company will not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by such Holder for use in preparation of any registration statement, prospectus, amendment or supplement; provided further, that the Company will not be liable in any such case to the extent the claim, loss, damage or liability arises out of or is related to the failure of such Holder to comply with the covenants and

agreements contained in this Agreement respecting sales of Registrable Securities, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time any Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a "Final Prospectus"), such indemnity shall not inure to the benefit of any such Holder if a copy of a Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage.

3.3.2 Each Holder will indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 3.3.3 below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, free writing prospectus or any amendment or supplement thereof, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each other Person controlling the Company for reasonable and documented legal and other out-of-pocket expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as incurred, in each case to the extent, but only to the extent, that such untrue statement or omission is made in reliance upon and in conformity with written information furnished to the Company by the Holder expressly for use in any registration statement, prospectus, amendment or supplement; provided that such indemnity shall not inure to the benefit of the Company and its controlling Persons to the extent that such claim, loss, damage or liability results from the fact that a copy of the prospectus was not made available to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, claim, damage or liability.

3.3.3 Each party entitled to indemnification under this Section 3.3 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such Indemnified Party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent (which consent will not be unreasonably withheld). No Indemnifying Party, in its

defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

3.3.4 If the indemnification provided for in this Section 3.3 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall, to the extent permitted by applicable law, contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

3.4 Holder Obligations.

3.4.1 Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Registrable Securities so that, as thereafter delivered to the Holders, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, each Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Registration Statement and prospectus contemplated by Section 3.1 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, each Holder shall deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

3.4.2 Each Holder shall suspend, upon request of the Company, any disposition of Registrable Securities pursuant to any Registration Statement and prospectus contemplated by Section 3.1 during no more than two periods of no more than 30 calendar days each during any 12-month period to the extent that the Board determines in good faith that the sale of Registrable Securities under any such Registration Statement would be reasonably likely to cause a violation of the Securities Act or Exchange Act.

3.4.3 As a condition to the inclusion of its Registrable Securities, each Holder shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing, including completing a customary registration statement questionnaire in the form provided by the Company, or as shall be required in connection with any registration referred to in this Section 3.

3.4.4 Each Holder hereby covenants with the Company (a) not to make any sale of the Registrable Securities without effectively causing the prospectus delivery requirements under the Securities Act to be satisfied, and (b) if such Registrable Securities are to be sold by any method or in any transaction other than on a national securities exchange or in the over-the-counter market, in privately negotiated transactions, or in a combination of such methods, to notify the Company at least five (5) business days prior to the date on which the Holder first offers to sell any such Registrable Securities.

3.5 Piggyback Registrations.

3.5.1 For a period following the issuance of Common Stock pursuant to the Subscription Agreement until Investor and its Affiliates, directly or indirectly, Beneficially Own less than five percent (5%) of the Company's outstanding Common Stock, whenever the Company proposes to register the issuance or sale of any of its Common Stock under the Securities Act for its own account or otherwise, and the registration form to be used by the Company may be used for the registration of the resale of Registrable Securities (each, a "Piggyback Registration") (except for the registrations on Form S-8 or Form S-4 or any successor form thereto) (a "Piggyback Registration Statement"), the Company will give written notice of the filing of such registration statement to the Holders and will use reasonable efforts to include in such registration all Registrable Securities (in accordance with the priorities set forth in Sections 3.5.2 and 3.5.3 below) with respect to which the Company has received written requests for inclusion, which request shall specify the number of such Registrable Securities desired to be registered and be delivered within fifteen (15) days after the delivery of the Company's notice. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration Statement at any time in its sole discretion.

3.5.2 If a Piggyback Registration is an underwritten primary offering on behalf of the Company and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities requested to be included in the registration creates a substantial risk that the price per share of the primary securities will be reduced or that the amount of the primary securities intended to be included on behalf of the Company will be reduced, then the managing underwriter and the Company may exclude securities (including Registrable Securities) from the registration and the underwriting, and the number of securities that may be included in such registration and underwriting shall include: (i) first, any securities that the Company proposes to sell, and (ii) second, on a pro rata basis based on the total number of Registrable Securities held by such Holders, any Registrable Securities proposed to be sold by the Holders.

3.5.3 If a Piggyback Registration is an underwritten secondary offering on behalf of holders of the Company's securities and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in the registration creates a substantial risk that the price per share of securities offered thereby will be reduced, the Company will include in such registration, on a pro rata basis based on the total number of Registrable Securities held by such Holders, any Registrable Securities proposed to be sold by the Holders.

3.5.4 In connection with any underwritten Piggyback Registration initiated by the Company, the Company shall have the right to (i) determine the plan of distribution and (ii) select the investment banker or bankers and managers to administer the offering, including the lead managing underwriter.

3.5.5 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 3.5.1 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of each Holder pursuant to Section 3.5.1 shall be borne by such Holder on the basis of the number of securities so registered.

3.6 Waiver. The rights of the Holders under any provision of this Section 3 may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) or amended by an instrument in writing signed by Investor or Holders holding a majority of the Registrable Securities outstanding at such time.

3.7 Definitions. For purposes of this Section 3:

3.7.1 "Block Sale" means an Underwritten Public Offering not involving any "road show" or other substantial marketing efforts by the underwriters, which is commonly known as a "block trade."

3.7.2 "Public Offering" means the offer and sale of Registrable Securities for cash pursuant to an effective registration statement under the Securities Act (other than a registration statement on Form S-4 or Form S-8 or any successor form).

3.7.3 "Registrable Securities" means the shares of Common Stock purchased by Investor pursuant to the Subscription Agreement or Convertible Note and shares of Common Stock issued as a dividend or other distribution with respect to, in exchange for or in replacement of such shares; provided, however, that securities shall cease to be Registrable Securities if they (a) have been disposed of pursuant to a registration statement declared effective by the SEC, (b) have been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale or (c) are transferred by a Holder in violation of this Agreement or any transfer restrictions set forth in the Subscription Agreement or Convertible Note.

3.7.4 "Registration Expenses" means (a) all expenses incurred by the Company in complying with Section 3.1 and/or Section 3.5 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration, and (b) fees and expenses of one counsel for all Holders, which fees under this clause (b) shall not exceed $30,000 with respect to any particular registration hereunder.

3.7.5 "Registration Statement" means the Initial Registration Statement, any New Registration Statement, any Remainder Registration Statement, or any Remainder Additional Registration Statement.

3.7.6 "Selling Expenses" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities, and all fees and expenses of legal counsel for any Holder in excess of the amount set forth in clause (b) of the definition of Registration Expenses.

3.7.7 "Underwritten Public Offering" means an underwritten Public Offering, including any bought deal or Block Sale to a financial institution conducted as an underwritten Public Offering.

3.7.8 "Underwritten Shelf Takedown" means an Underwritten Public Offering pursuant to an effective Registration Statement.

4. Non-Disparagement. During the Standstill Period, (a) the Investor shall not, and shall cause its directors, officers, partners, members, employees, agents (in each case, acting in such capacity) and Affiliates not to make, or cause to be made, by press release or other public statement to the press or media, any statement or announcement that constitutes an ad hominem attack on, or otherwise disparages (as distinct from objective statements reflecting business criticism), the Company, its officers or its directors or any person who has served as an officer or director of the Company in the past and (b) the Company shall not, and shall cause its directors, officers, partners, members, employees, agents (in each case, acting in such capacity) and Affiliates not to, make, or cause to be made, by press release or other public statement to the press or media, any statement or announcement that constitutes an ad hominem attack on, or otherwise disparages (as distinct from objective statements reflecting business criticism), the Investor. The foregoing shall not prevent the making of any factual statement including in any compelled testimony or production of information, either by legal process, subpoena, or as part of a response to a request for information from any governmental authority with purported jurisdiction over the party from whom information is sought.

5. Director Information. As a condition to the Appointee's or the Replacement's appointment to the Board and any subsequent nomination for election as a director at a subsequent Annual Meeting, the Appointee (including any Replacement, as the case may be) will provide any information the Company reasonably requires, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and will consent to appropriate background checks, to the extent, in each case, consistent with the information and background checks required by the Company in accordance with past practice with respect to other members of the Board. If, following the completion of the Company's initial background review process, the Board learns that the Appointee (including any Replacement, as the case may be) has committed, been indicted or charged with, or made a plea of *nolo contendre* to a felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, then the Board may request

that the Appointee or the Replacement, as the case may be, resign from the Board and, in such case, the resulting vacancy shall be filled in the manner set forth in Section 1.3 of this Agreement.

6. Representations and Warranties.

6.1 The Company represents and warrants to the Investor that: (a) the Company has the requisite corporate power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind it hereto and thereto; (b) this Agreement has been duly and validly authorized, executed and delivered by the Company, constitutes a valid and binding obligation and agreement of the Company and is enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; and (c) the execution, delivery and performance of this Agreement by the Company does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to the Company or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could constitute such a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which the Company is a party or by which it is bound.

6.2 The Investor represents and warrants to the Company that: (a) the Investor and the authorized signatory of the Investor set forth on the signature page hereto has the requisite power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind it hereto and thereto; (b) this Agreement has been duly authorized, executed and delivered by the Investor, constitutes a valid and binding obligation and agreement of the Investor and is enforceable against the Investor in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; (c) the execution, delivery and performance of this Agreement by the Investor does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to the Investor or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could constitute such a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which the Investor is a party or by which it is bound; and (d) as of the date of this Agreement, (i) the Investor has no equity interest in, or rights or securities to acquire through exercise, conversion or otherwise, any equity interest in the Company except pursuant to the Subscription Agreement and Convertible Note (as defined in the Subscription Agreement) and (iii) the Investor is not a party to any swap or hedging transactions or other derivative agreements of any nature with respect to any shares of Common Stock.

7. Expenses. Except as otherwise set forth herein, in the Subscription Agreement or the Loan Agreement (as defined in the Subscription Agreement), each Party to this Agreement shall bear and pay all fees, costs and expenses that have been incurred or that are incurred in the

future by such Party in connection with, relating to or resulting from such Party's efforts and actions, and any preparations therefor, prior to the execution and delivery of this Agreement.

8. Amendment in Writing. This Agreement and each of its terms may only be amended, waived, supplemented or modified in a writing signed by the signatories hereto.

9. Governing Law/Venue/Waiver of Jury Trial/Jurisdiction.

9.1 This Agreement shall be governed by, and construed in accordance with, the laws of the state of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Delaware.

9.2 Any dispute relating hereto shall be heard first in the Chancery Court for the State of Delaware or, if unavailable, the federal court in the State of Delaware, and, if applicable, in any state or federal court located in the State of Delaware in which appeal from such courts may validly be taken (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. The parties hereto further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and each of the foregoing parties hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such party may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

9.3 The parties hereto further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

9.4 Process in any such proceeding may be served on any party hereto with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 14 shall be deemed effective service of process on such Person.

9.5 Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10. Specific Performance. The Parties expressly agree that an actual or threatened breach of this Agreement by any Party will give rise to irreparable injury that cannot adequately

be compensated by damages. Accordingly, in addition to any other remedy to which it may be entitled, each Party shall be entitled to a temporary restraining order or injunctive relief to prevent a breach of the provisions of this Agreement or to secure specific enforcement of its terms and provisions, and each Party agrees it will not take any action, directly or indirectly, in opposition to another Party seeking relief. Each of the Parties agrees to waive any requirement for the security or posting of any bond in connection with any such relief.

11. Severability. If at any time subsequent to the date hereof, any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon the legality or enforceability of any other provision of this Agreement.

12. Non-Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

13. Entire Agreement. This Agreement constitutes the full, complete and entire understanding, agreement, and arrangement of and between the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written understandings, agreements and arrangements between them. There are no other agreements, covenants, promises or arrangements between the Parties other than those set forth in this Agreement (including the attachments hereto).

14. Notice. All notices and other communications which are required or permitted hereunder shall be in writing and shall be deemed validly given, made or served, when delivered in person or sent by overnight courier, when actually received during normal business hours, or upon confirmation of receipt when sent by e-mail (provided that such confirmation is not automatically generated), at the address specified in this Section 14:

If to the Company:

Kirkland's, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027
Attention: Amy Sullivan, President, Chief Executive Officer E-mail: Amy.Sullivan@kirklands.com

with a copy, which will not constitute notice, to: Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201 Attention: John Fuller

Email: jfuller@bassberry.com If to the Investor:

Beyond, Inc.
799 W. Coliseum Way Midvale, UT 84047 Attention: E. Glen Nickle, Chief Legal Officer Email: gnickle@beyond.com

with a copy, which will not constitute notice, to: Latham & Watkins LLP

330 North Wabash Avenue Chicago, Illinois 60611
Attention: Zachary Judd; Matthew Galligan Email: zachary.judd@lw.com
matthew.galligan@lw.com

15. Further Assurances. The Investor and the Company agree to take, or cause to be taken, all such further or other actions as shall reasonably be necessary to make effective and consummate the transactions contemplated by this Agreement.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties. Any purported transfer requiring consent without such consent shall be void.

17. No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and is not enforceable by any other Person.

18. Interpretation. Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each Party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged among the Parties shall be deemed the work product of all of the Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is hereby expressly waived by each of the Parties, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation.

19. Counterparts. This Agreement may be executed by the Parties in separate counterparts (including by fax, jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

[*The remainder of this page is left blank intentionally*.]

IN WITNESS WHEREOF, the Parties hereto have each executed this Agreement on the date set forth below.

Dated: October 21 , 2024

KIRKLAND'S INC.

By: /s/ Amy E. Sullivan

Name: Amy E. Sullivan

Title: President

BEYOND INC.

By:

Name:

Title:

IN WITNESS WHEREOF, the Parties hereto have each executed this Agreement on the date set forth below.

Dated: October 21, 2024

KIRKLAND'S, INC.

By:

Name:

Title:

BEYOND, INC.

By: /s/ Marcus Lemonis

Name: Marcus Lemonis

Title: Executive Chairman

Exhibit 10.21

Execution Version

COLLABORATION AGREEMENT

This Collaboration Agreement (this "**Agreement**"), dated as of October 21, 2024 (the "**Effective Date**"), is entered into by and between Kirkland's, Inc., a Tennessee corporation ("**Kirkland's**"), and Beyond, Inc., a Delaware corporation ("**Beyond**") (each a "**Party**", and together, the "**Parties**").

RECITALS

WHEREAS, concurrently herewith, (i) Kirkland's Stores, Inc., a Tennessee corporation and a subsidiary of Kirkland's ("**Borrower**"), and Beyond have entered that certain Term Loan Credit Agreement (the "**Beyond Credit Agreement**") pursuant to which, on the terms and subject to the conditions set forth therein, Beyond will make term loans to Borrower in the aggregate principal amount of $17,000,000, and (ii) Kirkland's and Beyond have entered into that certain Subscription Agreement (the "**Subscription Agreement**") pursuant to which, on the terms and subject to the conditions set forth therein, Kirkland's has agreed to issue and Beyond has agreed to subscribe for and purchase up to 4,324,324 shares of common stock of Kirkland's; and

WHEREAS, in connection with and as a condition to the consummation of the transactions contemplated by the Beyond Credit Agreement and the Subscription Agreement (the "**Financing Transactions**"), the Parties hereto have entered into this Agreement for the purpose of engaging in various collaborative efforts and services regarding their respective business operations.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **INTENT TO COLLABORATE**. The Parties acknowledge and agree that each Party has entered into this Agreement for the purpose of engaging in collaborative efforts and business arrangements intended to be mutually beneficial to each Party and its respective Affiliates. Consistent with and for the express purpose of carrying out the foregoing, each Party shall have the rights and obligations set forth in this Agreement. Except as expressly set forth in this Agreement or any exhibit hereto, the arrangements set forth herein shall be non-exclusive and each Party shall be free to contract and associate with other parties for similar arrangements. For purposes of this Agreement, (a) an "**Affiliate**" of a Person shall mean any Person directly or indirectly Controlling, Controlled by, or under common Control with such Person, (b) "**Control**" (including its correlative meanings "under common Control with" and "Controlled by"), with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise, and (c) "**Person**" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

2. **OPERATING ARRANGEMENTS**. During the Term, each Party shall engage in each of the following collaborative efforts (collectively, the "**Operating Arrangements**"):

(a) **Collaboration and Joint Marketing**: To the extent permitted by applicable law, the Parties shall engage in joint marketing, cross-marketing and other collaborative marketing efforts set forth on Exhibit A hereto and otherwise agreed to from time to time by the Parties in writing (the "**Marketing Activities**"). In furtherance thereof, each Party agrees to, as soon as reasonably practicable following the Effective Date, provide the other Party reasonable access to certain mutually agreed upon Customer Information (as such term is defined in Exhibit A-1) related to their respective customers, to the extent permitted by the Parties' respective privacy policies and applicable Privacy Laws (as such term is defined in Exhibit A-1). The Parties may also enter into similar customer data sharing arrangements with other third Persons, and the Parties, together with the third Persons sharing their Customer Information with the Parties, shall have access to and be permitted to use all of the shared Customer Information for the limited and specific purposes of the Marketing Activities, subject to applicable Privacy Laws and the terms and conditions of the Data Processing Addendum attached hereto as Exhibit A-1. To the extent either Party is not permitted by its privacy policy or Privacy Laws to share Customer Information immediately following the Effective Date, such Party shall use commercially reasonable efforts to amend such privacy policy and/or take all steps necessary under Privacy Laws in order to allow such Customer Information sharing as soon as reasonably practicable following the Effective Date. The Parties shall cooperate and consult with each other in good faith with respect to the determination of whether a Party is permitted under its applicable privacy policies and Privacy Laws to share any or all of its Customer Information as contemplated by this Agreement. Any dispute between the Parties as to whether such sharing is permitted under applicable Privacy Laws or the steps that must be taken thereunder shall be submitted to a mutually agreed upon independent third-party for review and advice; provided, that such advice will be non-binding on the Parties.

(b) **E-Commerce Support and Consulting**: Kirkland's may request Beyond to provide Kirkland's with consulting services in support of Kirkland's e-commerce platforms. Beyond will consider in good faith any such request, will use commercially reasonable efforts to provide such consulting services to Kirkland's in good faith subject to the availability of qualified personnel, and in accordance with terms mutually agreed by the Parties.

(c) **Sale of Kirkland's Products via BBB E-Commerce Channel**: The Parties shall make available for sale on Beyond's "Bed Bath & Beyond" online retail platform (currently located at https://www.bedbathandbeyond.com/) ("**BBB E-Commerce Channel**") all Kirkland's Products, including home décor, home furnishings, and gift products, on the terms and conditions set forth on Exhibit B-1 and Exhibit B-2 hereto. In the event of any conflict between the terms and conditions on Exhibit B-1 or Exhibit B-2 and the terms of this Agreement, the terms of this Agreement shall supersede and control with respect to such conflicting terms. For purposes of this Agreement, "**Kirkland's Products**" shall mean any and all products sourced by Kirkland's for retail sale by a Kirkland's-branded retail store or on any online marketplace under a Kirkland's label or on-line store designation, provided that the foregoing shall not include de minimis miscellaneous products or de minimis limited run items designated by Kirkland's for in-store only distribution.

(d) **Neighborhood Retail Stores; License Agreement**: The Parties shall commence and carry out a pilot program for the conversion of certain existing Kirkland's retail stores to "Bed, Bath & Beyond" and "Overstock Outlet and Returns" retail locations retail locations on the terms set forth on Exhibit C-1 hereto. Concurrent with the execution of this Agreement, the Parties shall enter

into a licensing agreement (the "**License Agreement**") in the form attached hereto as Exhibit C- 2, pursuant to which Beyond shall grant Kirkland's (i) an exclusive right and license to operate licensed retail locations in an in-store format ranging from 7,000 to 15,000 sq. ft. per store location (which shall, for avoidance of doubt, exclude any "shop-within-a-shop") (such format, a "**Neighborhood Format**") under the "Bed, Bath & Beyond" brand; and (ii) a non-exclusive right and license to operate licensed retail locations in a Neighborhood Format for "overstock.com", in each case as further set forth in the License Agreement.

(e) **Use of Beyond Marks for Shop-within-a-Shops in Kirkland's Retail Stores**: In accordance with the License Agreement, Kirkland's shall have the right to utilize "Bed, Bath & Beyond" and certain other related brand elements for the purpose of creating "Bed, Bath & Beyond" shop-within-a-shops in certain Kirkland's retail locations mutually selected by the Parties, and in the size and format mutually agreed by the Parties, which may include a pop-up- shop, semi-permanent shop in shop, designated merchandised or branded areas within stores, and end-caps. Kirkland's will be permitted to accept the applicable "Bed, Bath & Beyond" or similarly branded coupons issued or approved by Beyond (if any) within its stores for Licensor Products (as defined in the License Agreement) or Kirkland's Products sold through Kirkland's "Bed, Bath & Beyond" branded retail stores. Beyond shall use commercially reasonable efforts to facilitate introductions to Kirkland's of manufacturers or authorized distributors of any products sold by Licensor through the BBB E-Commerce Channel or otherwise sold by Beyond under the "Bed- Bath and Beyond" brand, to the extent that Kirkland's is not an authorized retailer of such products.

(f) **Surplus Sales of Kirkland's Products – Online Retail**: The Parties shall make available for sale certain aged or surplus Kirkland's Products through Beyond's affiliated online retail marketplace Overstock.com (currently located at https://www.overstock.com/) on the terms and conditions set forth on Exhibit D hereto. In furtherance thereof, Kirkland's agrees to make available for sale on Overstock.com all of its inventory of Kirkland Products that are surplus or over 180 days of age. Kirkland's shall not. directly or indirectly, offer for sale on any other online retail marketplace or e-commerce channel any such aged or surplus Kirkland's Products unless Beyond declines to place them for sale on Overstock.com. For purposes of this paragraph and Exhibit D, "Kirkland's Products" shall also include any product sourced by Kirkland's for retail sale in a Neighborhood Format licensed store brand. In the event of any conflict between the terms and conditions on Exhibit D and the terms and conditions of this Agreement, this Agreement shall supersede and control.

(g) **Sourcing Support**: Beyond may request Kirkland's to provide Beyond with sourcing support services in support of Beyond's e-commerce platforms (currently Overstock.com and the BBB E-Commerce Channel). Kirkland's will consider in good faith any such request, will use commercially reasonable efforts to provide such sourcing support services to Beyond in good faith subject to the availability of qualified personnel, and in accordance with terms mutually agreed by the Parties.

(h) **Other Collaboration**: The Parties acknowledge and agree that the foregoing Operating Arrangements are not intended to be exhaustive and each Party and its Affiliates may engage with the other Party and its Affiliates with respect to other collaborative measures as may be mutually agreed from time to time. As part of such other collaboration activities Beyond shall use commercially reasonable efforts to introduce Kirkland's to Beyond's product and business

vendors. Upon Kirkland's request, Beyond will consider in good faith and discuss with Kirkland's opportunities for further collaboration between the Parties with respect to other e-commerce retail operations or brands owned or controlled from Beyond and not included in the Operating Arrangements at such time. In addition, from and after the Effective Date and during the Term, upon request by Beyond, Kirkland's shall make available certain merchandising services, including product sourcing, selection, supply chain and inventory management for the support of BBB E-Commerce Channel, on terms and conditions, including compensation and reimbursement, to be mutually agreed upon by the Parties in good faith upon such request from Beyond, which terms shall be memorialized by amendment to this Agreement or any exhibit hereto.

(i) **Product Availability**: The Parties acknowledge that the Operating Arrangements set forth herein are subject to product availability and, except as may otherwise be agreed in writing with respect to any particular purchase order or other document, do not constitute commitments or guarantees of supply by one Party to the other.

(j) **Kirkland's and Beyond Joint Business Planning**: To assist in planning and support execution of the Operating Arrangements, Kirkland's and Beyond senior leadership along with the Review Committee (as defined below) or designees thereof will meet at a cadence mutually agreed to by the Parties to discuss progress of this Agreement, including without limitation progress and review of the Operating Arrangements, joint marketing programs and requirements and other material terms related to the Operating Arrangements set forth in this Agreement.

(k) **Review Meetings**: The Parties will establish a calendar of regular meetings between representatives of each Party (each, a "**Review Meeting**"). Each Review Meeting will be comprised of three (3) individual representatives of each respective Party (collectively, the "**Review Committee**") or such other number of individual representatives of each Party as is mutually agreed by the Parties. The Review Committee shall assist and be responsible for oversight and planning with respect to each Operating Arrangement and for reviewing and resolving any Business Issues (as defined in Section 2(l)(i) below) with respect to this Agreement in accordance with its role as set forth in Section 2(l). The Review Committee may develop and establish guidelines and governance rules for management and resolution of matters within its responsibility, and delegate such matters to subcommittees that the Review Committee appoints from time to time. Each Party's Review Committee appointees will be chosen by that Party in its sole discretion. The Review Committee shall hold in-person, telephonic or virtual meetings at least quarterly at times, dates, and locations (if in-person) to be mutually agreed upon in advance by the Review Committee members at the immediately preceding Review Meeting. To the extent commercially practicable, the Parties agree to alternate the in-person meeting locations between the office locations of each of the Parties. In addition, meetings of the Review Committee may be called by either Party at any time upon written notice delivered to the other Party at least fifteen (15) days prior to the proposed meeting date; provided that: (A) it has submitted in writing to the other Party a description of the matters it would like to discuss during such ad hoc meeting; and (B) the other Party agrees these matters should be discussed ahead of the next regularly scheduled meeting of the Review Committee. While the Parties may mutually agree to commit their Review Committee members to attend the meetings in person, all Review Meetings also may be held, and individual Review Committee members may attend, by audio or video teleconference or similar communications equipment by means of which all persons participating in the meeting can hear

each other. Each Party shall be responsible for all of its own expenses in participating in any Review Meetings.

(l) **Business Issue Resolution**:

(i) The Review Committee shall use commercially reasonable efforts to resolve any dispute between the Parties with respect to the Operating Arrangements or otherwise arising under this Agreement and impact thereof on the respective Parties, including material unforeseeable changes in the marketplace for each Party's respective products, limitations on availability of such products, material marketing program terms and requirements, and any modifications to the Operating Arrangements as permitted or otherwise contemplated herein as a result of any of the foregoing (each, a "**Business Issue**"). The members of the Review Committee will consult and negotiate with each other in good faith to find a mutually agreeable solution.

(ii) If the Review Committee cannot resolve such Business Issue within thirty (30) days after such Business Issue has been presented to the Review Committee, then any Review Committee member may present the Business Issue to an appropriate member of Beyond's senior leadership team, or such member's designee, and an appropriate member of Kirkland's senior leadership team, or such member's designee, who shall consult and negotiate with each other in good faith to find a mutually agreeable solution. If such members of the Parties' senior leadership team or their designees are unable to resolve the Business Issue within an additional thirty (30) day period from the date of presentation to them, they may submit the Business Issue to the Chief Executive Officer of Kirkland's and the Executive Chairman of Beyond for resolution. No recommendations of the Review Committee shall be binding on either Party. If a Business Issue has been referred to the Chief Executive Officer of Kirkland's and the Executive Chairman of Beyond for resolution, then the Chief Executive Officer of Kirkland's and the Executive Chairman of Beyond will meet, consult, and negotiate with the other in good faith to resolve such Business Issue. If they are unable to agree upon a resolution of the Business Issue within ten (10) days of the date of presentation to them, the Business Issue, either Party may seek to resolve such Business Issue in accordance with Section 9(d).

3. COLLABORATION FEES.

(a) **Collaboration Fee**: Kirkland's will pay to Beyond a quarterly fee in arrears equal to 0.25% of Kirkland's' retail and e-commerce revenue as determined in accordance with GAAP for each fiscal quarter (the "**Collaboration Fee**"). The Collaboration Fee shall begin accruing on February 2, 2025, with the initial Collaboration Fee due to be paid within 60 days following the end of the fiscal quarter beginning on such date. Kirkland's' obligation to pay the Collaboration Fee shall thereafter remain in effect through the Term, provided that Kirkland's obligation to pay the Collaboration Fee shall be automatically extended for two additional years following the effective date of expiration or termination of this Agreement if any of the promissory notes issued under the Beyond Credit Agreement remain outstanding and unpaid as of the expiration or termination of this Agreement.

(b) **Incentive Fee**: In addition to the Collaboration Fee, Kirkland's shall pay Beyond an incentive fee (the "**Incentive Fee**") on a monthly basis equal to 1.5% of the amount by which Kirkland's last twelve months' (LTM) e-commerce revenue (defined for this purpose as online

sales originated and processed through Kirklands.com, including BOPIS) as determined in accordance with GAAP, as of the last day of any fiscal month exceeds the Company's LTM e- commerce revenue for the LTM period most recently ended on the immediately preceding fiscal month-end prior to the date of this Agreement. For illustrative purposes, an illustration of the calculation of the Incentive Fee is attached hereto as Exhibit E.

(c) **Payment**: The Collaboration Fee payment shall be due and payable by Kirkland's not later than 60 days following the immediately preceding fiscal quarter with respect to which a Collaboration Fee is payable. The Incentive Fee shall be due and payable by Kirkland's not later than 60 days following the immediately preceding fiscal month with respect to which an Incentive Fee is payable.

(d) **Late Payments**. Kirkland's shall pay interest on any amounts owed but not paid by the applicable due date at a rate equivalent to the lesser of the applicable Prime Rate per annum or the maximum rate of interest allowable under applicable law, accruing from the date due to the date paid. For purposes herein, the "**Prime Rate**" shall mean the consensus prime rate of U.S. commercial banks in effect for the applicable period, as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates).

(e) **Review and Audit**: Kirkland's will prepare and maintain throughout the Term and for 3 years thereafter, in such manner as will allow its accountants to audit same in accordance with generally accepted accounting principles, separate, complete and accurate books of accounts and records sufficient to support and verify the calculation of Collaboration Fee and the Incentive Fee and otherwise covering all transactions arising out of or relating to this Agreement. Such books and records may be inspected by a duly authorized representative of Beyond no more than twice in any calendar year (or more frequently, if an underpayment is found) for verification of such payments or of compliance with other aspects of this Agreement. The Beyond representative will treat as confidential all relevant books and records. In the event such audit reveals an underpayment by Kirkland's, Kirkland's will within thirty (30) days' pay the amount in excess of the fees actually paid together with interest accrued from the date such amounts were originally due in accordance with Section 3(d) above. In the event an audit reveals an overpayment by Kirkland's, then Kirkland's may reduce any future payment due to Beyond under this Agreement or the License Agreement by an amount equal to such overpayment.

(f) **Fiscal Periods**: References to fiscal periods herein with respect Kirkland's shall mean such periods as reported within Kirkland's audited financial statements.

4. CONFIDENTIAL INFORMATION.

(a) **Confidentiality Restrictions**. All non-public, confidential information of either Party ("**Confidential Information**"), including, but not limited to, such information about such Party's business affairs, plans, forecasts, products, services, software, equipment, designs, prices, reports, processes, methodologies, confidential intellectual property, trade secrets, third-party confidential information, customer lists, marketing materials, and any other business information, in any form, disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, or otherwise learned by the Receiving Party, in connection with this Agreement, and whether or not

marked, designated, or otherwise identified as "confidential," shall be maintained as confidential by the Receiving Party, be used solely as necessary in performing the Receiving Party's obligations or exercising the Receiving Party's rights this Agreement and may not be disclosed or copied by the Receiving Party unless authorized by the Disclosing Party in writing. The Receiving Party will limit dissemination of any such Confidential Information (i) within its own organization to individuals whose duties justify the need to know such information; and (ii) to such other third parties and/or subcontractors of the Receiving Party, required in the Receiving Party's performance, necessarily requiring any such Confidential Information. The Receiving Party shall be responsible for any disclosure or misuse of Confidential Information by any person to whom or to which the Receiving Party makes Confidential Information available. The Receiving Party shall not use the Confidential Information of the Disclosing Party for its own use nor for any third party (other than as designated by the Disclosing Party in writing) for any purpose whatsoever except in the performance of the Receiving Party's obligations or exercise of the Receiving Party's rights under this Agreement. The Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a reasonable degree of care. Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement; (ii) is obtained by the Receiving Party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (iii) was in its possession prior to the Disclosing Party's disclosure hereunder without a duty of confidentiality; or (iv) was or is independently developed by the Receiving Party without using or referencing any of the Disclosing Party's Confidential Information.

(b) **Compelled Disclosures**. If the Receiving Party is compelled by applicable law to disclose any of the Disclosing Party's Confidential Information, then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances that confidential treatment will be given to such information.

(c) **Continuing Obligations**. The Receiving Party shall be responsible for any breach of this Section 4 caused by any of its employees, contractors, agents, or representatives. Each Party's obligations under this Section 4 will survive termination or expiration of this Agreement until the later of (i) five (5) years or (ii) two (2) years following the last to expire of the Operating Arrangements, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

5. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.

(a) **Mutual**. Each Party represents and warrants to the other Party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (b) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(b) **Limited Warranties**: Neither Party makes any guarantee, warranty or representation with respect to its products or services on behalf of the other Party to such other Party's customers or other persons. All warranty claims for a Party's products and services received by the other Party shall be processed in accordance with Kirkland's or Beyond's warranty procedures, as applicable.

(c) **Disclaimer of Warranties**:

(i) EXCEPT AS EXPLICITLY SET FORTH ABOVE OR IN ANY EXHIBIT HERETO, NEITHER KIRKLAND'S, NOR ANY PERSON ON KIRKLAND'S BEHALF, HAS MADE OR MAKES FOR BEYOND'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF (I) MERCHANTABILITY; (II) FITNESS FOR A PARTICULAR PURPOSE; (III) TITLE; OR (IV) NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. BEYOND ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY KIRKLAND'S, OR ANY OTHER PERSON ON KIRKLAND'S BEHALF.

(ii) EXCEPT AS EXPLICITLY SET FORTH ABOVE, NEITHER BEYOND, NOR ANY PERSON ON BEYOND'S BEHALF, HAS MADE OR MAKES FOR BEYOND'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF (I) MERCHANTABILITY; (II) FITNESS FOR A PARTICULAR PURPOSE; (III) TITLE; OR (IV) NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. KIRKLAND'S ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY BEYOND, OR ANY OTHER PERSON ON BEYOND'S BEHALF.

6. LIMITATION OF LIABILITY. WITHOUT LIMITING EACH PARTY'S LIABILITY UNDER THE LICENSE AGREEMENT OR ANY OTHER ANCILLARY AGREEMENT ENTERED INTO BY THE PARTIES ON CONNECTION WITH THE OPERATING ARRANGEMENTS, EXCEPT FOR LIABILITY FOR BREACH OF CONFIDENTIALITY OBLIGATIONS IN SECTION 4, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, BUSINESS, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. TERM, TERMINATION AND EFFECT THEREOF.

(a) **Effective Date and Term**: This Agreement shall become effective on the Effective Date, and shall continue for an initial term of seven (7) years ("**Initial Term**"). Upon completion of the Initial Term, this Agreement may be extended on mutually agreed terms for successive periods (any such period, a "**Renewal Term**" and collectively, the "**Term**").

(b) **No Termination without Cause**: The Parties agree that this Agreement may not be terminated without cause, other than by the mutual agreement of the Parties.

(c) **Termination for Cause**: If a Party commits a material breach of this Agreement, the other Party may terminate this Agreement by giving notice of said breach and termination to the breaching Party, such termination to be effective thirty (30) days following receipt of such notice delivered in the manner set forth in Section 9(c) below. During such thirty (30) day period, the breaching Party shall have the opportunity to cure its breach. If the breaching Party cures its breach to the reasonable satisfaction of the non-breaching Party, any such cure will operate to cancel the non-breaching Party's termination notice. Moreover, if a Party materially breaches this Agreement on two or more occasions, regardless of cure thereof, and invokes its right to cure a third material breach hereof, the non-breaching Party may reasonably refuse to accept the breaching Party's tender of its cure.

(d) **Effect of Termination**: Upon termination of this Agreement, except as otherwise mutually agreed in connection with such termination, each Party shall immediately and without delay cease and desist from holding itself out to the public in any fashion or manner as in active collaboration with the other, shall thereupon promptly remove and cease to utilize each other's trademark or name in connection with their respective business, signs or advertising materials of any kind, except as otherwise permitted in the License Agreement.

(e) **Bankruptcy; Change of Control**: Either Party may terminate this Agreement upon written notice to the other Party upon (i) insolvency of such other Party; (ii) assignment by such other Party for the benefit of creditors; (iii) institution of proceedings by or against such Party in bankruptcy or reorganization; (iv) appointment of a receiver of either Party; or (v) transfer or sale of all or substantially all of such other Party's business or assets or any change in the ownership of more than fifty percent (50%) of the voting capital stock of such other Party. The Parties acknowledge and agree that in the event either Party commences a proceeding under Title 11 of the United States Code (the "Bankruptcy Code"), this Agreement (i) shall be deemed to be an executory contract within the meaning of Section 365 of Bankruptcy Code, (ii) is personal to each of the Parties and an agreement of the type described by Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code; and (iii) as set forth in Section 9(b) below may not be assumed or assigned.

8. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL. From and after the
Effective Date and during the Term, in the event Beyond acquires the right to operate any other retail store brand not presently owned or operated by Beyond as of the Effective Date, and (i) Beyond desires that such store brand would be operated on a Neighborhood Format basis, Beyond shall provide Kirkland's notice of Beyond's intent to initiate in-store sales under such retail store brand and Kirkland's shall have the first option, exercisable within sixty (60) days of such notice,

to become Beyond's exclusive brick-and-mortar partner for licensed in-store retail locations in a Neighborhood Format on such terms and conditions as the Parties may mutually agree (any such agreement to be on market terms that are negotiated in good faith); and (ii) at any other time, Kirkland's shall have the right to request to operate such retail store brand within a Neighborhood Format store owned and operated by Kirkland's, which shall be considered by Beyond in good faith, on such terms and conditions as the Parties may mutually agree (any such agreement to be on market terms that are negotiated in good faith).

9. MISCELLANEOUS PROVISIONS.

(a) **Independent Contractor**: Neither Party is and shall not represent itself to be a subsidiary, affiliate, legal representative, agent, employee, or partner of the other Party or otherwise connected with the other Party, except as an independent distributor of the Kirkland's Products and Licensor Products, respectively, and neither Party shall have the authority to assume, create or incur any obligation or liability on behalf of the other Party.

(b) **Assignment**: This Agreement shall not be assigned by either Party and any assignment or attempted assignment by the other Party in violation of the foregoing shall be void.

(c) **Notices**: All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance herewith). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

Beyond shall send notices to Kirkland's as follows:

Kirkland's, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Amy Sullivan, President, Chief Executive Officer

W. Michael Madden, Executive Vice President and Chief Financial Officer With a copy to:

Kirkland's, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Carter Todd, General Counsel

Kirkland's shall send notices to Beyond as follows: Beyond, Inc.

799 W. Coliseum Way Midvale, UT 84047
Attention: E. Glen Nickle, Chief Legal Officer

(d) **Governing Law; Forum; Waiver of Jury Trial**: This Agreement shall be governed by the laws of the State of Delaware, without giving effect to the conflict of law provisions of Delaware, and any action or proceeding arising out of, or related to, this Agreement or the Products, including any action or proceeding related to any Business Issue that remains unresolved following compliance with the dispute resolution mechanism of Section 2(l) with respect to Business Issues, shall only be brought in an appropriate state or federal court in Delaware. The Parties expressly consent to venue in Delaware and to the personal jurisdiction of the Delaware courts. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(e) **Waiver**: Failure of either Party to enforce or exercise any of its rights with respect to any provisions hereof against the other Party shall not constitute a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to such Party's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by either Party of any of its rights hereunder shall not preclude or prejudice such Party from thereafter exercising the same or any other right which it may have under this Agreement.

(f) **Headings; Construction**: The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. The word "including" shall be read as "including but not limited to" and otherwise shall be considered illustrative and non-limiting. All references to dollars or "$" in this Agreement will be to U.S. dollars. The language used in this Agreement will be construed, in all cases, according to its fair meaning, and not for or against either Party hereto. The Parties acknowledge that each Party has reviewed this Agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be available in the interpretation of this Agreement.

(g) **Successors and Assigns**: This Agreement is entered into solely between, and may be enforced only by, the Parties and their successors and permitted assigns, and this Agreement shall not be deemed to create any rights in third parties, including, without limitation, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

(h) **Severability**: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, inoperative, or unenforceable, the remainder of this Agreement shall not be affected by such determination, and the remainder of this Agreement shall be given effect as if the invalid, inoperative, or unenforceable provision had not been included in this Agreement.

(i) **Survival**: The provisions of Sections 4, 5, 6, 7(d), and 9, and any other provisions in this Agreement or any exhibit hereto that are expressly stated to survive, or by implication are intended to survive, shall survive the expiration or termination of this Agreement for any reason. Termination or expiration of this Agreement shall not relieve either Party of any liability or obligation which accrued hereunder prior to the effective date of such termination or expiration nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

(j) **Cumulative Remedies**. In the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief. Except as expressly set forth in this Agreement, the right and remedies under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.

(k) **Entire Agreement and Modification**: Except as otherwise set forth herein, the Parties agree that this Agreement, including the Exhibits hereto, contains the entire agreement between the Parties and there are no other oral statements, representations, warranties or other agreements between the Parties. This Agreement can only be modified, amended or supplemented in writing signed by authorized representatives of both Parties. In the event of a conflict between the terms and conditions set forth in the body of this Agreement and the terms and conditions set forth in any Exhibit hereto, the terms and conditions set forth in the Exhibit shall govern and control.

(l) **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different Parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract between the Parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each of Parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

(*Signature page follows*)

IN **WITNESS WHEREOF** the Parties have executed this Agreement on the Effective Date.

KIRKLAND'S

By: /s/ W. Michael Madden

Name: W. Michael Madden

Title: Executive Vice President and

Chief Financial Officer

Address of Principal Place of Business:

5310 Maryland Way
Brentwood Tennessee 37027

BEYOND, INC.

By:

Name:

Title:

Address of Principal Place of Business:

799 Coliseum Way
Midvale, Utah, 84047

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

KIRKLAND'S

By:

Name:

Title:

Address of Principal Place of Business:

5310 Maryland Way
Brentwood Tennessee 37027

BEYOND, INC.

By: /s/ Marcus Lemonis

Name: Marcus Lemonis

Title: Executive Chairman

Address of Principal Place of Business:

799 Coliseum Way

Midvale, Utah, 84047

EXHIBIT A

Collaboration and Joint Marketing

The Parties agree to engage in Marketing Activities during the Term, in a manner permitted by applicable law, and as reasonably agreed in good faith by the Parties following the Effective Date.

EXHIBIT A-1

Data Processing Addendum

This Data Processing Addendum (this "**DPA**") forms part of and is incorporated into the Agreement and sets forth each Party's rights and obligations to the extent Customer Information is disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"). In the event of any conflicts between this DPA and the Agreement, this DPA will govern to the extent of the conflict.

1. DEFINITIONS. For the purposes of this DPA, the following terms shall have the meanings set out below. Capitalized terms used but not defined in this DPA shall have the meanings given in the Agreement. All other terms in this DPA not otherwise defined in the Agreement shall have the corresponding meanings given to them in Privacy Laws.

(a) "**Customer Information**" means any information that identifies or relates to an identified or identifiable individual, and/or is defined as "personal data," "personal information," "personally identifiable information," or any similar term under any Privacy Law.

(b) "**Privacy Laws**" means all applicable laws, rules, regulations, and binding guidelines, in each case as amended, consolidated, re-enacted or replaced from time to time, relating to the privacy, security, or processing of Customer Information, including without limitation, the California Consumer Privacy Act, as amended by the California Privacy Rights Act of 2020 (Cal. Civ. Code §§ 1798.100 - 1798.199) (the "**CCPA**").

(c) "**Security Incident**" means any (i) accidental, unlawful or unauthorized access, use, loss, exfiltration, disclosure, alteration, destruction, encryption, compromise, or other processing of Customer Information, or (ii) occurrence that otherwise constitutes a "data breach," "security breach," "personal data breach," "security incident," "cybersecurity incident," or any similar term with respect to Customer Information under any Privacy Law.

(d) "**Sensitive Customer Information**" means Customer Information that is defined as "sensitive," "special category," or any similar term under any Privacy Laws, including, but not limited to: (i) social security, driver's license, state identification card, passport number, or other unique identification number; (ii) account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; (iii) precise geolocation; (iv) racial or ethnic origin, citizenship or immigration status, religious or philosophical beliefs, or union membership; (v) health information, biometric information, genetic information, sex life, or sexual orientation; and (vi) information regarding children under 16.

2. PRIVACY AND CONFIDENTIALITY.

(a) The Disclosing Party represents and warrants that: (i) all Customer Information it discloses to the Receiving Party is collected and is disclosed in compliance with all Privacy Laws, including with respect to any applicable obligations to provide notice to and/or obtain consent from individuals; and (ii) no Customer Information provided to the Receiving Party includes any Sensitive Customer Information.

(b) Receiving Party shall only process Customer Information disclosed to it by Disclosing Party under this DPA for the purposes for which it is disclosed, and at all times in compliance with this DPA and all Privacy Laws, including providing the same level of data protection as required by such Privacy Laws.

(c) Receiving Party shall limit access to Customer Information to authorized personnel who have demonstrated a need to know such Customer Information for the purposes for which it is disclosed and are obligated to maintain the privacy, security, and confidentiality of such Customer Information. Receiving Party shall not disclose any Customer Information to any third party without Disclosing Party's express written permission, and only where such third party is bound by contractual obligations to maintain the privacy, security, and confidentiality of such Customer Information at least as restrictive as those set forth herein.

(d) Receiving Party shall maintain and periodically review access logs with respect to Customer Information and Disclosing Party may request quarterly reports summarizing access logs from the Receiving Party, including details of any access granted to third-party vendors or external parties.

(e) Receiving Party is prohibited from selling Customer Information or disclosing/processing it for targeted advertising purposes, unless the applicable individual has received explicit notice and is provided an opportunity to exercise the right to opt-out of such selling or disclosure/processing pursuant to Privacy Laws.

(f) Upon being notified by Disclosing Party that an individual has made a request pursuant to their rights under Privacy Laws with respect to Customer Information disclosed to Receiving Party, Receiving Party shall promptly comply with such request and otherwise reasonably assist Disclosing Party in fulfilling its obligations to comply with such request, including by forwarding the request to any other parties to whom Receiving Party has disclosed the Customer Information. Disclosing Party may require Receiving Party to provide reasonable documentation that verifies that Receiving Party no longer retains or uses the Customer Information of individuals who have requested the deletion of their Customer Information (unless an exemption to a deletion request applies), opted out of the selling of their Customer Information, or opted out of the disclosure/processing of their Customer Information for targeted advertising purposes.

3. CALIFORNIA RESIDENT CUSTOMER INFORMATION. This Section 3 shall only apply to the extent Disclosing Party makes available to Receiving Party Customer Information of California residents that is subject to the CCPA, and where such disclosure constitutes a sale or share under the CCPA. For purposes of this Section 3, the terms "sell," "share," "consumer," "business," and "third party" shall have the corresponding meaning given to them in the CCPA.

(a) The Parties agree that for purposes of the CCPA, Disclosing Party is a business and Receiving Party is a third party, and the disclosure of Customer Information is made for the limited and specific purpose of the Marketing Activities, as outlined in Exhibit A.

(b) Receiving Party shall only use the Customer Information for the specific and limited purpose identified above, comply with applicable obligations under the CCPA and provide the same level of privacy protection as is required of businesses by the CCPA, and notify Disclosing Party without

undue delay if Receiving Party makes a determination that it can no longer meet its obligations under the CCPA.

(c) Receiving Party shall grant Disclosing Party the right to (i) take reasonable and appropriate steps to help ensure that Receiving Party uses the Customer Information in a manner consistent with Disclosing Party's obligations under the CCPA, and (ii) upon reasonable notice, take reasonable and appropriate steps to stop and remediate any unauthorized use of the Customer Information.

4. **DATA SECURITY**. Receiving Party shall implement and maintain reasonable and appropriate physical, technical, and organizational safeguards to protect Customer Information disclosed to it by Disclosing Party against Security Incidents. Such safeguards shall include, at a minimum: (a) data encryption protocols, both in transit and at rest, as mutually agreed by the Parties and in accordance with industry standards; (b) an incident response plan.

5. **SECURITY INCIDENTS**. Receiving Party will notify Disclosing Party in writing within 48 hours after Receiving Party becomes aware of a Security Incident, and such notice shall include, at a minimum: (i) a description of the Security Incident, including the types of Customer Information impacted by the Security Incident and other material information reasonably requested by Disclosing Party; and (ii) steps Receiving Party has taken and will take to mitigate the impact of the Security Incident and remediate the causes of the Security Incident. The Parties will reasonably cooperate with one another on additional remediation efforts, including with respect to notifying impacted individuals and authorities.

6. **DELETION OF CUSTOMER INFORMATION**. At Disclosing Party's choice and direction, Receiving Party shall delete or return all Customer Information to Disclosing Party as requested upon termination of the Agreement, unless retention of the Customer Information is required by law, in which case, Receiving Party shall notify Disclosing Party without undue delay of such legal requirement and shall upon the expiration of such retention obligation immediately delete or return the Customer Information, at Disclosing Party's choice and direction. Upon completing the deletion of any Customer Information at the direction of Disclosing Party, Receiving Party shall provide Disclosing Party with written certification of such deletion.

7. **INDEMNIFICATION OBLIGATIONS**. Each Party ("**Indemnifying Party**") shall indemnify, defend, and hold harmless the other Party and its officers, directors, employees, agents, affiliates, successors, and permitted assigns ("**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs (collectively, "**Losses**"), arising out of or resulting from any claim of a third party arising out of or occurring in connection with any breach of this DPA or any Security Incident resulting from the Indemnifying Party's willful, fraudulent or negligent acts or omissions.

EXHIBIT B-1

Form of Marketplace Agreement

[see attached]

MARKETPLACE AGREEMENT

This Marketplace Agreement ("Agreement") is entered into between Overstock.com Services, Inc. ("OSTKS" "we," or "our") and the person or entity identified at the end of this Agreement ("Seller," "you" or "your"). This Agreement is made effective as of the date you execute this Agreement ("Effective Date").

We reserve the right at any time to change the Marketplace Fee Schedule ("Schedule") or any Policy or Policies, as defined in Section 4 of this Agreement All changes will become effective when published. At a minimum, we will provide a "last updated" date with the applicable Schedule or Policy to indicate the last date on which changes were made. Accordingly, it is your responsibility to review all Schedules and Policies referred to in this Agreement. In the event you do not agree with any changes to Schedules or Policies, you may terminate this Agreement as permitted herein, but certain obligations (as described below) will survive any termination. Your continued use of the services described herein shall constitute your acceptance to all changes.

1. The Marketplace. The Marketplace is an advertising, marketing and sale facilitation service ("Service") offered by OSTKS that allows you to advertise, offer, promote and sell your products ("Products" or "Product") on websites owned or operated by OSTKS or its affiliates or parent entities ("Sites"), or owned or operated by third parties who allow OSTKS or its affiliates or parent entities to sell products through such websites ("Third Party Sites"). You, as the seller, are selling your Products to our customers. OSTKS is not purchasing Products from you and OSTKS does not take title at any time to any of your Products.

2. Registration. In order to use the Service, you must execute this Agreement and provide any additional information that we request. Failure to provide requested information or providing false information may result in OSTKS' termination of this Agreement and any Seller privileges arising from this Agreement.

3. Supplier Oasis. OSTKS provides the Supplier Oasis Portal ("SOP") in conjunction with the Service whereby you can access an online interactive order and inventory management tool which permits you to track inventory and sales. Upon entering into this Agreement, we will grant you access to the SOP at http: //www.supplieroasis.com through the associated application programming interface ("API") or electronic data interchange ("EDI"). You acknowledge that we own all right, title and interest in and to the SOP, including but not limited to all services, reports, software tools, algorithms, software, user interface, ideas, suggestions, design, architecture, tools, network designs, processes, know-how, methodologies, trade secrets and any related intellectual property rights throughout the world. During the term of this Agreement, and so long as you pay the applicable fees, we hereby grant you a worldwide, non-exclusive, non-transferrable, limited and revocable license to access and use the SOP solely for your inventory management and sales tracking purposes. Nothing in this Agreement shall be construed as a conveyance or transfer of ownership or property rights in or to the SOP. The SOP is provided on an "AS IS" and "AS AVAILABLE" basis. We do not warrant that the SOP will be uninterrupted or error-free. We do not warrant the operation, functionality, accuracy, integrity or completeness of the SOP. You expressly assume all risks associated with the SOP. To the fullest extent permissible by law, we expressly disclaim all representations and warranties of any kind, express or implied, related to the SOP, including but not limited to warranties of performance, results, merchantability, fitness for a particular purpose, title, viruses, and non-infringement. Under no circumstances shall we be liable for any damages that result from your use of or inability to use the SOP. The foregoing general disclaimer of warranties and liabilities shall also apply to any links, content, performance and results of any third-party websites or systems, which you acknowledge are not controlled or endorsed by us.

4. Policy or Policies. Seller agrees, represents, and warrants, that at all times it will comply with any and all Policies made available to Seller within the help section of the SOP or otherwise communicated to Seller in writing (email sufficient) ("Policies" or "Policy"). If you list items contrary to our Policies or terms, you will be solely responsible for any and all consequences. You will indemnify and defend us against all Claims, as defined in Section 25 of this Agreement, arising from you listing Products which are not permitted by our Policies or terms.

5. Creating Your Listings. We will facilitate your listings when you provide us with images, text, warranty, disclaimers, warnings, country of origin, product dimensions, product weight, shipping dimensions, shipping weight, photographs, copy, content, descriptions, submissions, video, audio, advertisements and other information concerning your Products ("Seller Content") in the format requested by us. You are solely responsible for the accuracy and legality of the Seller Content. You are required to disclose the country of origin for all Products. You must have third party authorization to submit Seller Content that contains third party images or text. You are not permitted to list Products or upload Seller Content that infringes on another

party's intellectual property rights, are counterfeit, unauthorized duplications, inauthentic, not legal for sale, or that may mislead customers in any way. You may be required to provide records confirming the authenticity of your Products or your right to use Seller Content at any time. You are solely responsible to update your Seller Content from time to time to ensure all information remains accurate and legal. We reserve the right, but not the obligation, to edit, optimize, remove and/or block any Seller Content without notice in our sole discretion. We may allow our customers to rate you and/or your Products. We may allow customers to provide feedback and write Product reviews about you and/or your Products, and such feedback, reviews, and other user submitted content shall be our licensed property.

6. Pricing. You are solely responsible for setting the sale price that will be displayed on the Site ("Site Price" or "Site Prices"). You agree to ensure that the Site Price is at least as favorable to OSTKS customers as the most favorable terms upon which your Products are offered or sold through your other sales channels. You are not permitted to set Site Prices in any way that could constitute price gouging under federal, state, or local laws or misleads customers. You may provide MSRPs or reference prices related to your Products for our review. We reserve the right, but not the obligation, to publish any such MSRPs or reference prices. You may not publish MSRPs or reference prices in any title, content, description, or image of your Products.

7. Promotions. You acknowledge and understand that we have the right, but not the obligation, to run periodic promotions, offers, coupons, loyalty rewards or other pricing discounts ("General Promotions") which could affect the Site Price. We will bear the expense of General Promotions unless you have specifically agreed to bear all or some of the marketing expense of the General Promotions. From time-to-time, we may offer you the opportunity for a fee to advertise and promote your Products separate from any of our General Promotions.

8. Cost of Outbound Shipping & Handling. You will include the cost of outbound shipping and handling in the Site Price of your Product listings. You agree that we may charge and retain, in our sole discretion, any amount which we separately identify as shipping and/or handling. In the event that a customer requests expedited shipping, we will reimburse you such expedited shipping in an amount equal to the amount we charged the customer. We do not guarantee that the amount we reimburse will cover the cost of the expedited shipping.

9. Transmission of Order Information. We will transmit customer order information to you on a daily basis for each of your Products sold through the Site.

10. Fees. In exchange for advertising, marketing, processing payment and facilitating the sale of your Products, upon the sale of your Products, you agree to pay us: (a) a percent of the Site Price ("Product Fees") plus (b) any other fees ("Service Fees") set forth in the Marketplace Fee Schedule, which is attached hereto and incorporated herein by reference (collectively, "Fees"). The Marketplace Fee Schedule may be modified by us in accordance with its terms. If you do not agree to the proposed modifications, you may terminate this Agreement in accordance with its terms.

11. Collecting Payment from the Customer. As an accommodation to you, we will collect payment from the customer. You are the seller of record, but you authorize us to act as your agent to process payments, refunds and adjustments.

12. Chargebacks. Upon the receipt of a chargeback (other than as a result of credit card fraud as defined in Section 14), we will deduct the chargeback from your future payments and provide you with notice in your billing report. At your request, so long as you provide us with the information required in this Section within 5 business days of the date we notify you, we will dispute the chargeback for you. We may require information such as: (a) proof of fulfillment, (b) proof of delivery, (c) tracking information, (d) the order transaction number, (e) a description of your Product and (f) any terms provided or specified by you and displayed by us on the Product page at the time of the transaction in question. If you fail to provide us with all information we reasonably request, we will not be obligated to dispute the chargeback with the customer's bank and the chargeback will be deemed final. If the customer's bank accepts the information and reverses the chargeback, we will reverse the deduction. In the event the customer's bank refuses to reverse the chargeback, the chargeback and deduction will be deemed final. In the event we are not holding funds or if you do not have any future payments, and a chargeback is deemed final, you agree to promptly reimburse us for the chargeback amount.

13. Payment. Payments shall be remitted within 2 business days of the 1st and 16th of each month on a net 60 basis from shipment confirmation date. We will remit to you the amount of money we collect from a customer (excluding any shipping or handling charge that we have separately identified), subject to offsets for items such as refunds, chargebacks, indemnities, Fees or any other monies owed by you to us or to Beyond, Inc. ("Net Sales"). If your actions or performance result in Claims, as defined in Section 25 of this Agreement, disputes, violations of our terms or Policies, or other risks to OSTKS, Beyond, Inc. or third parties, we may withhold payment to you for as long as we detrrmine any related risks persist. If

we determine that you have or your account has been used to engage in deceptive, fraudulent, or illegal activity we may permanently withhold payment to you. You agree to notify us in writing of any payment discrepancies, errors or disputes within 30 days of the date we pay you. If you fail to notify us in writing of payment discrepancies, errors or disputes within 30 days of the date we pay you, you will be deemed to have waived any right to claim the payment or non-payment was erroneous. If this Agreement expires or is terminated, we will withhold payment from you to cover costs and fees related to returns which may accrue beyond termination for a period not to exceed 90 days.

14. Fraud. We will bear the risk of credit card fraud. Credit card fraud is defined as the use of a credit card that has been stolen or is used without the rightful owner's authorization or consent You will bear all other risk of fraud or loss, or other chargebacks. Despite us having transmitted order details to you, you agree to promptly cancel or stop the delivery of your Product if we ask you to cancel or stop. If you have already tendered your Products to a carrier, you will use commercially reasonable efforts to cancel or stop the delivery. You agree that we may refund, at your expense, any charges for orders which are cancelled or stopped.

15. Seller Identity. You acknowledge that you will be identified as the seller of your Products on the Site. You agree to identify your Product return address and your contact details (including company name, phone number, and/or email address) on the Site and in all pertinent documents provided in connection with the sale of your Products through the Site.

16. Shipment & Fulfillment Obligations. You agree that in connection with the sale of your Products through the Site, you will:

a. Review and retrieve order information at least once each business day.

b. Ship all Products by the end of the immediately succeeding business day immediately following your receipt of the order, unless a longer time is permitted by us. A Product shall only be considered shipped at the point of first scan by the carrier.

c. Package your Products in a commercially reasonable manner in order to prevent damage duringshipping.

d. Properly label each shipment

e. Include an approved order-specific packing slip with each shipment.

f. Remove all unapproved information in your Products and packaging, including but not limited to all third party marketing information or materials not directly from the manufacturer.

g. Include any applicable tax invoices or notices with each shipment.

h. Provide us with order status and valid carrier tracking information within 1 business day after the sale.

i. Not initiate contact with customers, except to respond to an inquiry from a customer, or except as otherwise required by Law, as defined in Section 25 of this Agreement, or to fulfill your obligations under this Agreement.

j. Not market your Products or services directly to the customer, except through the Marketplace.

k. Not market your website or store direct to the customer.

17. Shipping & Fulfillment Errors. You are solely responsible for any non-performance, non-delivery, wrong delivery, theft or mistake ("Fulfillment Error") in connection with the fulfillment of your Products, except in the event the Fulfillment Error is our fault such as us providing customer order or address information different from what the customer provided. In the event that a Product is lost or damaged in transit and is eligible for a claim from the carrier, you are responsible for initiating the claim with the carrier within 24 hours of receiving contact from the customer. You must make a resolution with the customer within 10 business days of filing the claim, however, OSTKS reserves the right to provide a remedy for the customer at any time and at Seller's expense. It is your sole responsibility to complete the claim with the carrier. You are solely responsible for any defect, damage, recalls or any other problem or concern with respect to the Products you sell through the Site.

18. Returns. You agree to provide a clear returns policy in connection with your Products, including any restocking fees or return shipping fees associated with a Product return. You must accept returns from customers pursuant to the terms of your returns policy. All Products will be returned directly from the customer to you at a location that you designate. You will accept, process and notify us of your receipt of a returned item within 3 business days of your receipt of the returned item by accessing the SOP and completing the return. The shipping cost to return a Product to you will be paid by you or the customer, but in no case will it be paid by us. In the event we receive or facilitate the return of your Product to you, we will send such Product to you and deduct the cost of freight from any amount we owe you.

19. Refunds. You authorize us to process all refunds and adjustments for your orders which are cancelled, returned or disputed. Except for sales tax and any separately identified shipping and/or handling charges, for which we will determine the appropriate refund, you will determine, calculate and instruct us as to the amount of all refunds and adjustments or other amounts to be refunded to customers up to tl1e amount the customer paid. You agree that you will not pay refunds or adjustments directly to customers. We will provide refunds and adjustments to the customer as directed by you and you will reimburse us for the amount we refund to the customer at your request We may offset any refund or adjustment against future payment obligations we owe you. In the event this Agreement is terminated or where we do not owe you any payments, you will promptly pay us for any refund or adjustment we make on your behalf within 10 days of the date we transact the refund or adjustment

20. Customer Service. You agree that you are solely responsible for the customer service in relation to the sale of your Products through the Site. You agree that you will post a Product return address, telephone number and/or email address so that customers may ask you questions about your Products and initiate returns. You agree to respond to all customer inquiries within 1 business day of receipt of the inquiry. You will not refer to yourself as "Beyond," "Bed Bath & Beyond," "Overstock," "Overstock.com," "Overstock.com Services" or use any similar reference in your customer service. You must use commercially reasonable efforts to resolve all customer service inquiries within 5 business days. OSTKS reserves the right to remedy customer inquiries from time to time in our sole discretion and as we see fit

21. Customer Escalation. Although customer service is your sole responsibility, we reserve the right to provide any customer with a remedy, refund or adjustment if we determine that you have dealt unfairly with the customer. Examples of dealing unfairly with a customer include, but is not limited to, your failure to resolve a customer's complaint owing to: your failure to timely respond to a customer, the customer not receiving the item described, the item being damaged when the customer received it, you provide substandard customer service, the Product missing parts or components or the Product being returned to you, but you haven't authorized a refund. In the event we provide a customer with a refund, adjustment, or any other remedy, you are responsible for the amount of the refund, adjustment, or other remedy.

22. The Sites. We retain the sole right to determine the content, appearance, design, functionality and all other aspects of the Sites. We may edit, modify, change or alter the Sites at any time without notice to you. We may remove or restrict third party access to your Products in our sole discretion. We may suspend or terminate your ability to list Products on the Sites, remove Product(s), or terminate any Seller privileges arising from this Agreement in our sole discretion at any time without notice.

23. Term & Termination. This Agreement commences on the Effective Date and terminates upon termination as permitted herein or as otherwise provided for in this Agreement. Either party may terminate this Agreement upon 30 days prior written notice.

24. Insurance. Seller shall obtain and maintain, at its own expense, commercial general liability insurance (including products liability and/or umbrella coverage) in the amount ofat least $1,000,000 per occurrence/ $2,000,000 aggregate. Seller shall add Overstock.com Services, Inc. and Beyond, Inc. as additional insureds. Seller shall supply us with certificates evidencing compliance with this obligation. All policies shall provide that coverage may not be decreased or terminated without at least 30 days prior written notice to us.

25. Indemnification. You agree, at your own cost and expense, to indemnify, defend and hold us, our affiliates, subsidiaries, parent companies, employees, officers, directors and agents harmless from and against any and all allegations (even though such allegations may be false, fraudulent or groundless) asserted in any claim, action, lawsuit, investigation or proceeding, whether actual or alleged ("Claim" or "Claims") arising out of or related in any way to:

a. *A* breach by you of any obligation, representation or warranty set forth in this Agreement.

b. Claims of infringement, misuse, dilution, misappropriation or other violation of any patent, trademark, service mark, trade name, trade dress, copyright, trade secret, domain name, right of publicity or other intellectual property right in any way related to your Products.

c. The death of or injury to a person, damage to any property or any other damage or loss, by whomever suffered, resulting from or claimed to result in whole or in part in any way related to your Products; including, without limitation Claims related to faulty or defective construction, packaging, installation, repair, display, service or design of such Products.

d. The failure of your Products to comply with any express or implied warranties.

e. The Seller Content.

f. The packaging, tagging, labeling, advertising, packing, shipping and/or delivery of your Products.

g. The failure to warn or to provide adequate warnings and/or instructions related to the use, assembly, service or installation of your Products.

h. Your or your Product's manufacturer's violation in the manufacture, possession, use, distribution or sale of your Products contrary to federal, state or local law, regulation, ordinance, administrative order or rule of the United States (including, but not limited to those rules and regulations of the Federal Trade Commission, the U.S. Postal Service, the Consumer Product Safety Commission and the Federal Communications Commission) or any other country in which your Products are produced or delivered ("Law" or "Laws").

i. Your or your Product manufacturer's violation in the manufacture, possession, use, distribution or sale of your Products contrary to any of our Policies.

26. Representations & Warranties. You make the following representations and warranties in connection with this Agreement:

a. You have the right and ability to sell the items you list on the Site.

b. All listings you post are materially accurate, current, complete and not misleading or otherwise deceptive.

c. You understand that failing to fulfill your obligations under any of your listings or this Agreement are legally actionable by us and/or our customers.

d. All of your Products are genuine and authentic as to the brands, materials, and purposes represented, are legal for sale, and are not counterfeit or unauthorized duplications.

e. Unless otherwise specified in the Product's title and copy, your Products are new, first-quality merchandise, are free from all material defects in workmanship and design and are in the original manufacturers' retail packaging.

f. If your Products are refurbished or remanufactured, you will disclose such fact in the Product title and copy and all Products will be free from all material defects in workmanship and design and their appearance and functionality are in like-new condition. Packaging for refurbished Products must specify that such Products have been refurbished.

g. All Products, including the production, sale, packaging, labeling, safety, testing, importation and transportation thereof, and all representations and advertising are in compliance with all applicable Laws and Policies.

27. Publication Rights.

a. You grant us a nonexclusive, royalty free, worldwide license to use, reproduce, sublicense, display, distribute and publish the trademarks, service marks, trade names, trade dress, copyrights and rights of publicity associated with your Products for the purpose of marketing, promoting and facilitating the sale of such Products through any promotional, advertising or distribution channels, including, without limitation print, television, radio and/or Internet.

b. You grant us a perpetual, nonexclusive, royalty free, worldwide, irrevocable right and license to use, reproduce, perform, sublicense, display, distribute, publish, adapt, modify, re-format, create derivative works of, with or without attribution, in and to any and all Seller Content and any other material submitted by you to us (collectively "Materials") which relate in any way to your Products. Notwithstanding an expiration or termination of this Agreement, the licenses described in Section 27(a) and 27(b) continue until Seller affirmatively and specifically notifies OSTKS to discontinue use of the Materials.

28. Confidentiality. During the Term of this Agreement, one party ("Discloser") may disclose to the other party ("Recipient") Confidential Information. "Confidential Information" means all information regarding Discloser that is not generally known to the public. Recipient will treat such Confidential Information as confidential and proprietary both during the term and after the term for the greater of a period of three (3) years or the maximum period permitted by law. Recipient agrees to: (a) not use the Confidential Information for any purpose other than in performing its obligations as set forth in this Agreement; (b) take reasonable precautions to maintain the confidentiality of the Confidential Information; and (c) not disclose or otherwise furnish the Confidential Information to any third party other than Recipient's employees who have a need to know the Confidential Information to perform Recipient's obligations under this Agreement, provided such employees are contractually obligated to Recipient to maintain the confidentiality of Discloser's Confidential Information. Recipient agrees to be responsible for the violation of this clause by its employees and anyone to whom it discloses Discloser's Confidential Information. Upon the termination or expiration of this Agreement, Recipient shall return or destroy all Confidential Information in Recipient's possession.

29. Customer Information. All information (including but not limited to name, address, telephone number, email, purchase history, payment method and browsing history) in any way related to a customer purchasing your Products through the Sites is our Confidential Information.

30. Limitation of Liability. EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM THE LOSS OF USE OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR AN AMOUNT IN EXCESS OF THE AMOUNT OF MONEY PAID BY US TO YOU WITHIN THE 12 MONTH PERIOD PRECEDING THE ARISE OF THE CLAIM.

31. Notices. Any notice or other communication required or permitted herein shall be given in writing and may be delivered in person, by certified or registered mail (postage pre-paid and return receipt requested), by express courier (e.g., Federal Express overnight delivery) or by email to addresses identified when signing up for the Services described herein. Each party has an affirmative duty to keep such contact information current.

32. Assignment You may not assign, transfer or otherwise delegate this Agreement or any of its rights or obligations hereunder without our prior written consent. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns.

33. Waiver. Except as expressly provided otherwise, any failure or delay by either party to enforce or exercise any right or privilege permitted herein shall not operate as a waiver of any such right or privilege or operate as a waiver of any subsequent exercise of such right or privilege.

34. Modifications & Amendments. This Agreement may only be modified or amended in writing, signed by both parties.

35. Severability. The holding of any provision of this Agreement to be void, invalid or unenforceable shall not affect the validity of any other provision of this Agreement.

36. Survival. The provisions of this Agreement relating to payment of Fees; delivery of Products, confidentiality; warranties; limitation of liability; indemnification; law; severability; and this paragraph shall survive any termination or expiration of this Agreement.

37. Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Utah. The parties agree that any legal action between them arising out of this Agreement shall be commenced and maintained exclusively in the state or federal courts located in Salt Lake City, Utah.

38. Entire Agreement. This Agreement constitutes the complete and entire statement of all terms, conditions and representations of the agreement and understanding between you and us with respect to the subject matter set forth herein.

39. Relationship of the Parties. The relationship between the parties hereunder is not an employment relationship, joint venture or partnership. Neither of us has authority to act on behalf of the other or to bind the other by any promise or representation unless specifically authorized in writing.

40. Tax. We will calculate, collect, and remit any applicable sales taxes that should be assessed, accrued, incurred, collected, paid or remitted in connection with the sale of your Products through the Site ("Sales Taxes"). We will remit all Sales Taxes collected in connection with the sale of your Products through the Site to the proper government agencies. You shall obtain all permits and licenses required under any applicable law, at your own cost and expense, and shall pay and discharge all other applicable taxes and assessments which may be due in connection with your business or the sale of your Products through the Site (collectively, "Other Taxes"). You understand, acknowledge, and agree that we are not providing tax advice to you. You further understand, acknowledge, and agree that we are not making any representation or warranty that your Sales Tax calculation needs will be satisfied or that the calculation of Sales Taxes is accurate. You are solely responsible for any Other Tax liabilities, including, without limitation any penalties or interest, associated with your business or the sale of your Products through the Site. You maintain sole responsibility for the collection, reporting, and paying of Other Taxes applicable to your business. You agree to indemnify, defend and hold us, our directors, officers, employees, agents, parent companies and affiliates harmless from against any and all Claims, liabilities, losses, fines, fees, penalties, interest and costs arising out of or related in any way to Other Taxes imposed or assessed on us which is legally payable by you. You agree that if any governmental authority determines that you are otherwise responsible for the collection and remittance or reporting of Other Taxes (and related penalties and interest) relating to your business, you agree (a) that you shall be solely responsible for payment of such Other Taxes (and all related penalties and interest) and/or reporting of such Other Taxes (if applicable), (b) that we shall have no liability to you or any governmental authority for such Other Taxes or penalties and (c) that you will not seek any reimbursement from us for such Other Taxes (and related penalties and interest).

WHEREFORE, OSTKS and Seller have caused this Agreement to be executed by their authorized representatives identified below.

MARKETPLACE FEE SCHEDULE

This Marketplace Fee Schedule is incorporated into the Marketplace Agreement This Marketplace Fee Schedule may be modified by us at any time for any or no reason upon 14 days prior written (including email) notice. If you do not agree to the proposed modifications,you may terminate the Marketplace Agreement in accordance with its terms.

PRODUCT FEES		
STORE_ID	**STORE_NAME**	**PERCENT OF SITE PRICE**
1	Home & Garden*	24.0%
2	Electronics*	10.0%
4	Jewelry & Watches	22.0%
5	Sports & Toys (Games & Instruments)	17.0%
7	Clothing & Shoes	16.0%
8	Health & Beauty	16.0%
9	Food & Gifts	16.0%
22	Office Supplies	16.0%
33	Luggage & Bags	16.0%
34	Crafts & Sewing	18.0%
35	Baby	18.0%
37	Pet Supplies*	17.0%
42	Emergency Preparedness	16.0%
43	Bedding & Bath*	27.0%
46	Holiday	16.0%
SO	Garage & Automotive*	12.0%
51	Books & Movies	16.0%
52	Lighting & Ceiling Fans	24.0%

**If you list Products under Stores marked with an asterisk, the rates may vary. See below.*

PRODUCT FEES - EXCEPTIONS TO STORE RATE		
DEPT_ID	**DEPT_NAME**	**PERCENT OF SITE PRICE**
31	Housewares	16.0%
33	Tools	20.0%
446	Janitorial & Cleaning	14.0%
542	Wheels & Tires	10.0%
545	Tools & Equipment	20.0%
CAT_ID	**CAT_NAME**	**PERCENT OF SITE PRICE**
245	Appliances	16.0%
270	Computers	8.0%
272	Computer Accessories	16.0%
706	Kitchen Storage	20.0%
707	Table Linens & Decor	27.0%
718	Power Tools	12.0%
719	Yard Care Tools	16.0%
814	Photo Accessories	16.0%
952	Cordless Power Tools	12.0%
1456	Window Treatments	27.0%
1457	Slipcovers	27.0%
1458	Cookware	20.0%
1459	Cutlery	20.0%
1460	Bakeware	20.0%
1461	Cooking Essentials	20.0%
1462	Dinnerware	20.0%
1463	Flatware	20.0%
1464	Glasses & Barware	20.0%
1465	Serveware	20.0%

1555	Hardware & Accessories	16.0%
2165	A/V Accessories	16.0%
2180	Printer Accessories	16.0%
2757	Monitor Accessories	16.0%
2762	MP3 & iPod Accessories	16.0%
2764	Cell Phone Accessories	16.0%
3379	Large Appliances	10.0%
3488	Outdoor Cooking	20.0%
3634	Picnic	20.0%
3645	Bird Food & Treats	10.0%
4505	Food & Treats	10.0%
20262	Desktops	8.0%
20264	Tablets	8.0%
20265	iPad & Tablet Accessories	16.0%
20269	GPS Accessories	16.0%
20279	Smart Watches & Accessories	16.0%
29834	Dog Food & Treats	10.0%
29853	Horse Food & Treats	10.0%
29862	Reptile & Amphibian Food & Dishes	10.0%
SUBCAT_ID	**SUBCAT_NAME**	**PERCENT OF SITE PRICE**
133	Laptops	8.0%
2011	Throw Pillows	27.0%
27678	Laptop AC Adapters	8.0%
28194	Gaming Laptops	8.0%
28195	Laptops/ 2-in-ls	8.0%
28196	Notebooks	8.0%
28197	Ultrabooks	8.0%

SERVICE *FEES*	
Refund Processing Fee (amount we charge you when we refund a customer)	If Seller closes the return within 60 days from the date of shipment, the lesser of $5 or 15% of the aoolicable Product Fee
	If Seller closes the return after 60 days from the date of shipment, 100% of the applicable Product Fee
Supplier Oasis Transaction Fees[1]	Greater of $25 per billing cycle[2] (or) Cost/Order 0-1,000 $0.50 1,001 - 5,000 $0.45 5,001 - 10,000 $0.40 10,001 - 50,000 $0.35 50,001 - 100,000 $0.30 100,001+ $0.25
Marketing Allowance Fee4	0 % of Site Sales

Last Updated 10 September 2024

[1] Supplier Oasis Transaction Fees will accrue when Seller is integrated into the Supplier Oasis Portal ("SOP") and receives its first order and will continue until the immediately following January 31st. On each February 1st, the Supplier Oasis Transaction Fees will reset to the applicable cost/order based on the immediately prior calendar year's number of orders.
[2] Each month has 2 billing cycles. The 1st billing cycle runs from the 1st through the 15th of the month. The second billing cycle runs from the 16th through the end of the month.
[3] An "order" constitutes one or more items that are ordered together, sourced to the same warehouse and shipped to the same address.
[4] OSTKS is authorized to deduct the Marketing Allowance Fee from the Site Price, as defined in the applicable Agreement, of each unit of inventory shipped or fulfilled as a marketing allowance fee. This fee will be used by OSTKS in its sole and exclusive discretion for marketing internally and

externally in an effort to generate sales across the OSTKS platform. OSTKS' use of this fee is confidential and will not be disclosed due to its proprietary marketing strategies. OSTKS reserves the right to adjust this fee on 30 days' prior written notice to Seller.

AMENDMENT TO
MARKETPLACE FEE SCHEDULE

This Amendment to the Marketplace Fee Schedule ("Fee Schedule Amendment") is executed on this26th day of September 2024 ("Amendment Effective Date") between Overstockcom Services, Inc. ("OSTKS") and the seller identified herein ("Seller").

WHEREAS, OSTKS and Seller previously entered into the Marketplace Agreement ("Agreement"); and WHEREAS, the parties desire to modify and amend the Agreement in accordance with this Fee Schedule Amendment;

NOW THEREFORE, in consideration of the promises and mutual covenants and other terms and conditions contained herein, and intending to be legally bound, the parties agree to modify, amend and supplement the Agreement as follows:

1. The "[CATEGORY /SUBCATEGORY]" line in the Marketplace Fee Schedule under the "PRODUCT FEES" heading is deleted and replaced with the following:

PRODUCT FEES		
CATEGORY/SUBCATEGORY	I	**PERCENT OF SITE PRICE**
ALL CATEGORIES	I	18%

2. All other provisions of the Agreement and the Marketplace Fee Schedule not modified by this Fee Schedule Amendment shall remain in full force and effect

IN WITNESS WHEREOF, OSTKS and Seller have caused this Fee Schedule Amendment to be executed by their duly authorized representatives identified below as of the Amendment Effective Date.

EXHIBIT B-2

Additional BBB E-Commerce Channel Terms

Kirkland's Product Selection

Kirkland's shall make available all Kirkland's Products for online retail sale on the BBB E-Commerce Channel.

Pricing

Kirkland's shall have sole discretion regarding pricing applicable to end customers for any Kirkland's Product listed for online retail sale on any BBB E-Commerce Channel.

Purchasing, Forecasting and Seasonal Planning

The Parties shall regularly review the results of the sale of Kirkland's Products on BBB E- Commerce Channel and collaborate with respect to purchasing, forecasting and seasonal planning.

Joint Marketing

The Parties shall engage in mutual and joint marketing programs intended to increase awareness and traffic to Kirkland's Products hosted on the BBB E-Commerce Channel in accordance with Section 2(a) of the Agreement.

Fees and Commissions

For Kirkland's Products sold through BBB E-Commerce Channel, Beyond will receive an eighteen percent (18%) commission on all revenue derived from the sale of Kirkland's Products sold at retail price which may be further set forth in separate purchase orders or addenda hereto entered into by the Parties from time to time during the Term.

Taxes

Each party agrees to pay, collect, calculate, remit and be responsible for its respective applicable sales, use, valued-added, income, excise, privilege, property transfer, franchise and any other taxes ("Taxes") arising out of this agreement. Beyond shall be responsible for the collection of all taxes due in respect of online sales of Kirkland's Products through Beyond E-Commerce Channels, which sales taxes will be remitted by Beyond to the proper taxing authority.

Shipping

The Parties shall work together and collaborate to determine and implement processes for the collection and payment of all shipping charges in connection with the online sales of Kirkland's Products through Beyond E-Commerce Channels and for shipping of such products to the customer/purchaser consistent with the Master Services Agreement in place between the Parties as of the Effective Date.

EXHIBIT C-1

Terms of Neighborhood Retail Pilot

Store Identification & Conversion Plans

Within 90 days following the date of the Collaboration Agreement (the "**Planning Period**"), the Parties shall mutually identify up to ten (10) locations at which a Neighborhood Format Bed, Bath & Beyond retail location would be established for five locations and a Neighborhood Format Overstock Outlet and Returns would be established for five retail locations, all as part of a branding, merchandising and operational testing pilot program, which retail location would be operated by Kirkland's pursuant to the terms of the License Agreement and as otherwise set forth in the Collaboration Agreement. These may include the conversion of current Kirkland's retail locations or newly identified real estate locations.

During the Planning Period, the Parties will establish store conversion or development plans, which shall be inclusive of signage, advertising and marking plans (including print, mail, e-mail, social media and other customary or alternative channels), fixture and store merchandising selections, point-of-sale equipment and other retail store operating requirements.

Construction and Conversion Costs

Store conversion costs will be borne by Kirkland's. Kirkland's will use commercially reasonable efforts to seek landlord contributions to capital conversion costs. Beyond will reasonably cooperate in any landlord discussions, waivers or negotiations necessary to enable the store conversions.

Pilot Term

The "Pilot Term" (i.e., the time period during which the Parties will select and convert stores into Licensed Stores (as defined in the License Agreement)) will continue for the period that is not more than eighteen (18) months following the date of the Collaboration Agreement. The Parties will work in good faith to open at least one pilot Bed, Bath & Beyond Neighborhood Format retail location and at least one pilot "Overstock Outlet and Returns" retail location prior to the date that is 180 days following the date of the Collaboration Agreement.

Licensing Fees

In consideration for the licensed right to operate such Neighborhood Format retail locations, Kirkland's shall pay the license and royalty fees set forth in the License Agreement attached hereto as Exhibit C-2.

Information Sharing and Reporting

During the Pilot Term Kirkland's shall actively monitor customer traffic, conversion and other sales metrics and report such metrics to Beyond on a regular reporting basis.

End of Pilot Term and Expansion

If at any time following the Effective Date, the Parties mutually agree upon the success of the pilot program, the Parties may agree to expand the conversion program to additional stores.

EXHIBIT C-2

Form of License Agreement

[see attached]

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (this "Agreement") is entered into as of October 21, 2024 (the "Effective Date") by and between Beyond, Inc., a Delaware corporation ("Licensor"), and Kirkland's Inc., a Tennessee corporation ("Licensee") (each a "Party", and together, the "Parties").

WHEREAS, (i) Licensor and Kirkland's Stores, Inc., a Tennessee corporation and a subsidiary of Licensee ("Borrower") have entered that certain Term Loan Credit Agreement (the "Beyond Credit Agreement") pursuant to which, on the terms and subject to the conditions set forth therein, Beyond has made term loans to Borrower in the aggregate principal amount of $17,000,000, and (ii) Licensor and Licensee have entered into that certain Subscription Agreement (the "Subscription Agreement") pursuant to which, on the terms and subject to the conditions set forth therein, Licensee has agreed to issue and Licensor has agreed to subscribe for and purchase up to 4,324,324 shares of common stock of Licensee;

WHEREAS, in connection with and as a condition to the consummation of the transactions contemplated by the Beyond Credit Agreement and the Subscription Agreement (the "Financing Transactions"), concurrently herewith, the Parties have entered into that certain Collaboration Agreement for the purpose of engaging in various collaborative efforts and services regarding their respective business operations ("Collaboration Agreement"), including Licensee's operation of retail concept stores under Licensor's Trademarks identified on Schedule A ("Licensed Marks"), as may be modified by the Parties, upon the terms and conditions herein; and

WHEREAS, the Parties have agreed to enter into this Agreement concurrently with the closing of the transactions contemplated by the Beyond Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

"Annual Period" means each consecutive twelve (12) month period during the term of this Agreement commencing the 1st day of Licensee's fiscal calendar, as reported in Licensee's audited financial statements, and ending on the Saturday closest to the 31st day of January, except that the first Annual Period shall commence on the Effective Date and end on January 31, 2026.

"Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"Licensor Products" means those products that are sourced by or on behalf of Licensor for retail sale on Licensor's Bed, Bath & Beyond e-commerce site, overstock.com and such other branded retail channels as further described in the Collaboration Agreement.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

"Shop-within-a-Shop" means a space within a Licensee-branded brick-and-mortar retail store that is branded with the Licensed Marks and reflects branding elements associated with the Licensed Marks and in which Licensee promotes, features and sells solely Licensor Products. A "Shop-within-a-Shop" may take the form of a pop-up shop, semi-permanent shop-within-a-shop, designated merchandised or branded areas within stores, end-caps or other merchandising and promotional settings, in each case, as mutually agreed to in writing by the Parties.

"Trademark" means all trademarks, brand names, trade dress, logos and other identifiers of source, together with all registrations and applications for registration thereof.

2. LICENSE GRANTS

2.1 Neighborhood Format Brick-and-Mortar Stores. Subject to the terms and conditions of this Agreement, including payment of royalties pursuant to Section 6, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive (except as set forth in Section 2.2), non-transferable, non-sublicensable license to operate brick-and-mortar retail stores branded under the Licensed Marks, in each case, in an in-store format ranging from 7,000 to 15,000 sq. ft. per store location, (which shall, for avoidance of doubt, exclude Shop-within-a- Shops) (such format, a "Neighborhood Format"), pursuant to the Collaboration Agreement or otherwise approved in writing by Licensor from time to time ("Licensed Stores"), including the advertising, marketing and promotion of such Licensed Stores; provided that the aesthetics of the Licensed Stores, the assortment of products therein and the concentration of the vendors of such products shall be substantially consistent with the historical practice of Licensor and its Affiliates and its or their predecessors in connection with their operation of retail stores under the Licensed Marks, unless Licensee obtains Licensor's prior written consent to sell other products, which may be given or withheld in Licensor's sole and absolute discretion.

2.2 Exclusivity. During the term of this Agreement, directly or indirectly, Licensor shall not, and shall not grant a license or right to any Affiliate or third party to, operate any BED BATH & BEYOND or BABY & BEYOND branded brick-and-mortar retail stores in the Neighborhood Format in the United States.

2.3 Shop-within-a-Shops. Subject to the terms and conditions of this Agreement, including payment of royalties pursuant to Section 6, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, license to use

the BED BATH & BEYOND marks and associated branding elements owned by Licensor to create and operate a Shop-within-a-Shop at the locations and in the size and format mutually agreed upon by the Parties in writing from time to time, and to advertise, market and promote such Shop-within- a-Shops; provided that, in each Shop-within-a-Shop, Licensee shall solely promote, feature and sell Licensor Products as mutually agreed upon.

2.4 Subsidiaries. The licenses and rights set forth above and other rights set forth herein shall extend to each Licensee Affiliate set forth on Schedule B, but only for so long as they remain Affiliates of Licensee. Licensee shall be responsible for each such Licensee Affiliate's compliance with the terms of this Agreement.

2.5 New Trademarks. Schedule A may be updated by the Parties from time to time upon the Parties' mutual written agreement to reflect (i) a Trademark that uses, incorporates or modifies a Licensed Mark, and (ii) a Trademark acquired by Licensor and under which Licensee has the right to sell Licensed Products pursuant to Section 8 of the Collaboration Agreement.

3. OWNERSHIP AND USE RESTRICTIONS

3.1 Ownership, Goodwill and Reservation of Rights. Any rights not expressly granted in this Agreement are expressly reserved for Licensor. Licensor reserves all rights to the Licensed Marks except as specifically granted herein to Licensee and Licensor may exercise such rights at any time. Any and all goodwill arising from Licensee's and its sublicensees' use of the Licensed Marks shall inure solely to the benefit of Licensor. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this Agreement. Licensee is only licensed to use the Licensed Marks, and not any variations, adaptations, translations, abbreviations, localizations or derivatives thereof without the prior written consent of Licensor.

3.2 No Inconsistent Action. Licensee shall not take any action or fail to take any action that would reasonably be expected, in any material respect, to impair or reduce the value or strength of any Licensed Mark, the reputation of Licensor or any of its Affiliates, or the goodwill associated with or symbolized by any Licensed Mark.

3.3 Restrictions. Licensee acknowledges the validity and Licensor's sole and exclusive ownership of the Licensed Marks, and shall not, directly or indirectly, (a) assert any claim of ownership or right in the Licensed Marks, other than the rights expressly granted pursuant to the license hereunder, (b) interfere with, oppose, cancel or otherwise challenge Licensor's or its Affiliates' registrations or applications for registration of the Licensed Marks (including domain name registrations), (c) apply for, or participate with or cause any other entity to apply for, the registration of any Licensed Marks or any logo, symbol, trademark, service mark, company or corporate name, product name, domain name or commercial slogan that comprises or is confusingly similar to any of the Licensed Marks, or (d) challenge the ownership or use of the Licensed Marks by Licensor or its Affiliates or its or their licensees. For avoidance of doubt, except in connection with advertising and promotional campaigns using the Licensed Marks to promote the Licensor Products in the Neighborhood Format or Shop-within-a-Shops locations as approved by the Review Committee on a case-by-case basis, Licensee shall not have the right to use the Licensed Marks in any domain name or on or in connection with any online, mobile or other

electronic stores or social media accounts. Any violation of the foregoing shall be deemed a material and uncurable default hereunder.

3.4 Confusing Use. Licensee shall not use the Licensed Marks in any manner likely to cause confusion or doubt in the mind of the public as to the ownership and control thereof or in any manner that does not make clear that the Licensed Marks are owned and controlled exclusively by Licensor. In addition, except to the extent approved in writing by Licensor, Licensee shall not use or co-mingle with the Licensed Marks any other trademarks, characters or properties, whether owned by Licensee or another, so as to suggest that such other trademarks, etc. may have been created or may be owned, controlled, licensed or approved by Licensor or that they are in any way related to the Licensed Marks or Licensor.

3.5 Customer Complaints. Licensee shall, in connection with its duty to use the Licensed Marks so as to promote the continuing goodwill thereof, give immediate attention and take necessary action to satisfy all legitimate customer complaints brought against Licensee in connection with the Licensed Stores or Shop-within-a-Shops or products or services provided therein. Licensee shall give Licensor notice within five (5) days of receipt of all complaints that might reasonably be expected to affect the good standing of the Licensed Marks or the reputation of Licensor and also of all complaints that might reasonably be expected to result in legal action between Licensor and any third party, and cooperate with Licensor upon request to achieve as good a reputation and press for the Licensed Marks as possible.

4. REGISTRATION, INFRINGEMENT AND ENFORCEMENT

4.1 Registration. Licensor shall, in its reasonable discretion, prosecute and maintain the applications and registrations for the Licensed Marks during the term of this Agreement at Licensor's sole cost and expense. Licensor may, in its discretion, seek to apply for the registration of New Trademarks in any jurisdiction. Licensee shall not seek to apply for the registration of the Licensed Marks or any New Trademarks.

4.2 Infringement; Enforcement. Licensee shall promptly inform Licensor in writing of any infringement, dilution, or other violation of a Licensed Mark of which Licensee becomes aware and shall reasonably cooperate with Licensor, at Licensor's reasonable expense, in the protection and defense of the Licensed Marks. Licensor shall, in its reasonable discretion, defend and enforce the Licensed Marks. For avoidance of doubt, Licensor shall have the sole and exclusive right, but not the obligation, to defend and enforce the Licensed Marks.

5. QUALITY CONTROL

5.1 Branding Guidelines. The Review Committee (as defined in the Collaboration Agreement) shall manage all matters that require the Parties' cooperation or consultation with each other under this Agreement. Licensee shall use the Licensed Marks in accordance with (a) the specifications set forth on Schedule A and (b) in a manner that is consistent with the branding guidelines provided by Licensor to Licensee in writing from time to time (the "Branding Guidelines"). Licensor agrees to consider in good faith any revisions to the Branding Guidelines that are proposed by the Review Committee; however, Licensor shall have the right to accept or reject any such proposals in its sole discretion. Licensee shall obtain Licensor's prior written approval or approval of the Review Committee for all advertising, marketing and promotional

materials bearing the Licensed Marks, which approval shall not be unreasonably withheld, conditioned or delayed.

5.2 Quality Standards. The quality of the goods and services sold, provided or otherwise commercialized by Licensee in the Licensed Stores and Shop-within-a-Shops will be of the same or higher quality as the goods and services sold, provided, or otherwise commercialized by Licensor and its Affiliates and its or their predecessors in connection with the Licensed Marks at its or their brick-and-mortar stores historically, and at least of a quality so as to maintain the value, reputation and goodwill of Licensor, its Affiliates and the Licensed Marks. Licensee agrees to undertake any actions that Licensor may reasonably request to assist Licensor in inspecting and monitoring the quality of the goods and services offered in the Licensed Stores and Shop-within- a-Shops and the use of the Licensed Marks in connection with such goods and services.

5.3 Compliance with Law. Licensee shall only use the Licensed Marks in compliance with applicable laws, and shall comply with all applicable laws and obtain all appropriate governmental approvals pertaining to (a) the operation of Licensee's business, (b) the sale, provision, or other commercialization of goods and services in the Licensed Stores and Shop- within-a-Shops, and (c) any other activities conducted by Licensee in association with the Licensed Marks.

5.4 Notices and Legends. In all uses of the Licensed Marks, Licensee shall include all notices and legends with respect to the Licensed Marks as reasonably requested by Licensor, and, to the extent practical, shall place the symbols "®", "™" or "℠", as applicable, or other designations legally required or useful for enforcement of trademark or service mark rights, next to the Licensed Marks consistent with the same manner in which Licensor and its Affiliates use such symbols or other designations.

6. FEES AND PAYMENT

6.1 Royalties. Licensee shall pay to Licensor a royalty of three percent (3%) on all Net Sales of products and services sold through the Licensed Stores and Shop-within-a-Shops (inclusive of buy-online-pay-in-store (BOPIS) amounts generated from Licensor e-commerce websites), which shall increase to five percent (5%) upon any expiration or termination of the Collaboration Agreement, less the amount of Guaranteed Minimum Royalty paid with respect to such period (the "Sales Royalty").

6.2 Guaranteed Minimum Royalty. Commencing upon the opening of the first licensed Neighborhood Format location, Licensee shall pay to Licensor a "Guaranteed Minimum Royalty" of Sales Royalties, in the aggregate, equal to (a) two-hundred thousand dollars ($200,000) over the first twenty-four (24) months of the term of this Agreement (payable in monthly installments) and (b) three-hundred thousand dollars ($300,000) per Annual Period (twenty-five thousand dollars ($25,000) payable per month) thereafter, pro-rated for any partial Annual Period.

6.3 Net Sales. As used herein, "Net Sales" means mean the gross sales (the gross invoice amount billed customers) of products and services (including sales of warranty policies, insurance and other similar products and services) based on the invoiced price to such customers by or on behalf of Licensee, less only the following actual and allowable deductions: (a) returns (or destruction in place) that Licensee actually authorizes and, for returns, Licensee actually

receives, (b) allowances (defined as credits to a customer after delivery, including credits for returns, promotions and markdowns), (c) trade discounts (defined as reductions in the list wholesale selling price that are customary in the trade) that Licensee actually grants in writing prior to delivery, and (d) sales tax (but only to the extent the same appear separately on Licensee's invoice), provided that "Net Sales" shall include any products shipped to a customer in exchange for returned products. No deduction shall be made for any other discounts, uncollected accounts, commissions, levies, duties, or for the cost of any expenses, direct or indirect, incurred in operating or selling products or services through the Licensed Stores and Shop-within-a-Shops. "Net Sales" also includes insurance proceeds received by Licensee in respect of products and services sold through the Licensed Stores and Shop-within-a-Shops, but only to the extent that such insurance proceeds paid with respect to any such products exceed Licensee's cost incurred for such products and services. In all events, the total of any and all deductions taken by Licensee pursuant to this Section in calculating "Net Sales" shall not exceed the actual amount of all allowable deductions or six percent (6%) of the total amount of gross sales, whichever amount is less, during any Annual Period.

6.4 Payment. The Guaranteed Minimum Royalty for each month during an Annual Period shall be paid within thirty (30) days after the end of such month during the term of this Agreement (or portion thereof in the event of prior termination for any reason). The Sales Royalty hereunder shall be accounted for and paid monthly within thirty (30) days after the close of each month during the term of this Agreement (or portion thereof in the event of prior termination for any reason). The Sales Royalty payable for each month shall be computed on the basis of Net Sales during such month, and shall be reduced by the amount of the Guaranteed Minimum Royalty paid for such month. All payments to Licensor under this Agreement shall be paid in U.S. Dollars, by wire transfer in accordance with the wire instructions provided by Licensor. Wire transfer fees as well as all other bank fees related to any payments required of Licensee under this Agreement shall be the sole expense of Licensee, so that Licensor shall receive the full amount of all payments without reduction.

6.5 Taxes. All payments made by the Licensee under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, turnover, sales, value added stamp or other taxes, government withholding tax, levies, imposts, duties, charges, fees, deductions or withholdings (individually or collectively, "Taxes"), now or hereafter imposed, levied, collected, withheld or assessed by any tax or other governmental authority. In the event that any Taxes are now or hereafter required to be imposed, levied, collected, withheld, paid and/or assessed under applicable law from, or in respect of, any amount otherwise payable to the Licensor hereunder, then (x) the Licensee shall pay over to the relevant governmental authority the amount of such Taxes required to be paid by it under applicable law,
(y) the Licensee shall deliver to the Licensor as soon as practicable after the Licensee's payment of such Taxes a certified copy of a receipt issued by the relevant governmental authority evidencing such payment or such other evidence of such payment reasonably satisfactory to the Licensor, and (z) the amount so payable by the Licensee to the Licensor shall be increased and grossed-up to the extent necessary to yield to the Licensor the amount specified in the Agreement as being payable to the Licensor had such Taxes not been imposed, levied, collected, withheld, paid and/or assessed (including with respect to any increased and gross-up amounts). To the extent any such Taxes are paid or payable by the Licensor, a certificate delivered to the Licensee by the Licensor as to the amount of such Taxes shall be conclusive absent manifest error and the Licensee

shall pay to the Licensor the required grossed-up amount within 10 days after the Licensor's deliver of such certificate.

6.6 Late Payments. Licensee shall pay interest on any amounts owed but not paid by the applicable due date at a rate equivalent to the applicable Prime Rate (as defined in the Collaboration Agreement) per annum from the date such payment was due (but not more than the maximum rate of interest which legally can be paid).

6.7 Sales Statement.

(a) Licensee shall deliver to Licensor at the time each Sales Royalty payment is due, a statement signed by a duly authorized officer of Licensee and certified by him or her as accurate indicating per Licensed Store and Shop-within-a-Shop: (a) by product category, by style number, by customer and in the aggregate, the number and aggregate invoice price of all products and services sold through the Licensed Stores and Shop-within-a-Shops during the period covered by such Sales Royalty payment and the amount of discounts, allowances, returns and any other deductions from gross sales, (b) a separate list of all SKUs of Licensor Products actually sold during the reporting period, (c) the amount of any insurance proceeds received by Licensee in respect of products and services during said period, and setting forth a computation of the amount of Sales Royalty payable hereunder for said period ("Sales Statement"). The reporting period for each Sales Statement shall be the prior calendar month, and the format of the Sales Statement shall be mutually agreed upon by the Parties. Such statement shall be furnished to Licensor whether or not any products or services have been purchased during the reporting period for which such statement is due. A copy of the foregoing reports shall be sent to Licensor in Excel format.

(b) In addition to the Sales Statement for the final calendar month of each Annual Period, Licensee shall deliver to Licensor, not later than sixty (60) days after the close of each Annual Period (or portion thereof in the event of prior termination for any reason), a statement signed and certified by its chief executive or financial officer relating to said entire Annual Period, setting forth the same information required to be submitted by Licensee in accordance with Section 6.7(a).

7. BOOKS AND RECORDS; AUDITS.

(a) Licensee shall prepare and maintain, in such manner as will allow its accountants to audit same in accordance with generally accepted accounting principles, separate, complete and accurate books of account and records (specifically including the originals or copies of documents supporting entries in the books of account) covering all transactions arising out of or relating to this Agreement. Licensor and its duly authorized representatives, may, during regular business hours at times agreed upon by the Parties and with at least thirty (30) days prior written notice, for the duration of this Agreement and for three (3) years thereafter, audit said books of account and records and examine all other documents and material in the possession or under the control of Licensee as necessary to verify Licensee's compliance with its obligations under this Agreement; and Licensor shall have free and full access thereto for said purposes and for the purpose of making abstracts therefrom and copies thereof. All copies and information accessed, produced or obtained in connection with such audit is the Confidential Information of Licensee and shall be protected as such under Section 4 of the Collaboration Agreement. Any such audit commenced within such period may continue through completion in the ordinary course; provided,

that such audit is conducted in a manner designed to minimize disruption to Licensee's business. All such books of account, records and documents, including computer records, shall be kept available by Licensee for at least three (3) years (or such longer period as required by law) after the end of the term of this Agreement and through the completion of any audit commenced prior to the end of such period.

(b) If any examination or audit discloses that the payments required to be made under this Agreement exceeded the payments actually made (each a "Shortfall"), Licensee shall pay the Shortfall together with interest on the Shortfall at a rate equivalent to the applicable Prime Rate (as defined in the Collaboration Agreement) per annum from the date such payment was due (but not more than the maximum rate of interest which legally can be paid). In addition, if any examination or audit discloses that the Shortfall exceeds four percent (4%) for any calendar month, Licensee shall also pay the cost of such examination or audit in addition to the Shortfall and interest. All payments due pursuant to this Section 7(b) shall be made within fifteen (15) days after Licensee receives notice thereof.

8. TERM AND TERMINATION

8.1 Term. The term of this Agreement will commence on the Effective Date and, subject to earlier termination under Section 8.2, will continue until the later of (a) the expiration or termination of the Collaboration Agreement, or (b) the expiration of the then-existing term or initial term (not to exceed five (5) years), as applicable, of the lease(s) for all Licensed Stores.

8.2 Termination for Breach. Without limiting any of Licensor's other remedies at law or in equity, Licensor may terminate this Agreement:

(a) on seven (7) Business Days' prior written notice (such notice effective upon expiration of the seven (7) Business Day notice period) if Licensee fails to (i) furnish the Sales Royalty when due and/or Sales Statements required hereunder, or (ii) pay any other undisputed amounts due or invoiced hereunder, such notice of termination shall become effective unless, within such seven (7) Business Day period, Licensee shall completely remedy the breach and furnish the required payments and/or report;

(b) on thirty (30) days' prior written notice (such termination effective upon expiration of the thirty (30) day notice period) for any other material breach of this Agreement by Licensee, in the event that Licensee fails to cure such breach within such thirty (30) day period; or

(c) if, in Licensor's reasonable opinion, Licensee's ability to perform under this Agreement is or will be impaired due to Licensee's financial inability to comply with its anticipated obligations under this Agreement; a petition in bankruptcy is filed by or against Licensee; Licensee is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law; Licensee discontinues its business; or a receiver is appointed for Licensee or Licensee's business and such receiver is not discharged within thirty (30) days.

8.3 Bankruptcy.

(a) No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this Agreement or exploit or in any way use the Licensed Marks if Licensor terminates this Agreement pursuant to Section 8.2(c).

(b) In the event of a Licensee bankruptcy proceeding, the Parties acknowledge and agree that: (i) this Agreement is an executory contract within the meaning of Section 365 of Bankruptcy Code; and (ii) as set forth in Section 14.2 below, Licensor, in its interest to safeguard its valuable interests (including, without limitation, the Licensed Marks), has relied on the particular identity, skill and knowledge of the Licensee and, as a result, this Agreement: (A) is personal in nature to the Licensee; (B) is an agreement of the type described by Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code; and (C) may not be assumed or assigned.

8.4 Effect of Termination. Within ten (10) days after the expiration or any termination hereof, Licensee shall pay to Licensor any Guaranteed Minimum Royalty installments and Sales Royalty then owed to it pursuant to this Agreement. Upon expiration or termination of this Agreement, the licenses granted by this Agreement shall immediately and automatically terminate, and Licensee shall cease and desist from all use of the Licensed Marks. Notwithstanding the foregoing, if Licensee is not in breach of this Agreement as of the date of termination or expiration, upon request from Licensee, Licensor will grant Licensee an additional six (6) month period to transition off the use of the Licensed Marks (the "Transition Period"), provided that Licensor determines, in its reasonable discretion, that there is no material risk of Licensee failing to pay the Sales Royalty for the Transition Period. This Agreement shall remain in effect during any such Transition Period (including Licensee's obligation to pay royalties pursuant to Section 6). The following provisions shall survive termination or expiration of this Agreement (or the Transition Period, if applicable): Sections 1, 3, 7 (for the time period set forth therein), 8.3, 8.4, 9, 10, 11, 12, 13 (for the time period set forth therein) and 14.

9. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (b) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

10. DISCLAIMER OF WARRANTIES

LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSED MARKS ARE LICENSED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND THAT LICENSOR DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE LICENSED MARKS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY IMPLIED WARRANTY OF NONINFRINGEMENT, SUFFICIENCY, QUALITY, USEFULNESS, COMMERCIAL UTILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE).

11. INDEMNIFICATION

11.1 Indemnification by Licensor. Licensor shall indemnify, defend and hold harmless Licensee and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensee Indemnitees") from and against any and all damages, losses, liabilities, costs, expenses and other payments ("Losses") resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensee Indemnitees to the extent such Losses arise out of or are in connection with allegations that Licensee's use of a Licensed Mark in compliance with this Agreement infringes, dilutes or otherwise violates the intellectual property rights of a third Person.

11.2 Indemnification by Licensee. Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensor Indemnitees") from and against any and all Losses resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensor Indemnitees to the extent such Losses arise out of or are in connection with (a) Licensee's operation of the Licensed Stores or Shop-within-a-Shops, including the sale, distribution and other commercialization of products and services through the Licensed Stores or Shop-within-a-Shops, with the exception of claims for which Licensor is required to indemnify the Licensee Indemnitees pursuant to Section 11.1, or (b) Licensee's breach of this Agreement.

11.3 Indemnity Procedures. If any claim or action is asserted against any Licensee Indemnitee or Licensor Indemnitee (each, an "Indemnified Party") that would entitle such Indemnified Party to indemnification pursuant to this Section 11 (a "Proceeding"), the Indemnified Party will give prompt written notice thereof to the other party (the "Indemnifying Party"); provided, however, that the failure of any Indemnified Party to give timely notice hereunder will not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party demonstrates actual damage caused by such failure. The Indemnifying Party may elect to direct the defense or settlement of any such Proceeding by giving written notice to the Indemnified Party, which election will be effective immediately upon receipt by the Indemnified Party of such written notice of election. The Indemnifying Party will have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnifying Party deems it advisable to do so, all at the expense of the Indemnifying Party; provided that the Indemnifying Party will not settle, or consent to any entry of judgment in, any Proceeding without obtaining either: (a) an unconditional release of the Indemnified Party from all liability with respect to all claims underlying such Proceeding; or (b) the prior written consent of the Indemnified Party. An Indemnified Party will not settle, or consent to any entry of judgment, in any Proceeding without obtaining the prior written consent of the Indemnifying Party. Each Indemnifying Party and Indemnified Party will fully cooperate with each other in any such Proceeding and will make available to each other any books or records useful for the defense of any such Proceeding.

12. LIMITATION OF LIABILITY

WITH THE EXCEPTION OF LICENSOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 AND LIABILITY ARISING FROM LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE MAXIMUM EXTENT PERMITTED

BY LAW, LICENSOR SHALL NOT BE LIABLE UNDER THIS AGREEMENT TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY) OR CONTRIBUTION, AND IRRESPECTIVE OF WHETHER LICENSOR OR ANY RELATED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

13. INSURANCE

Simultaneously with the execution of this Agreement, Licensee shall promptly obtain and maintain in full force and effect at all times during the term of this Agreement and for at least three (3) years thereafter, at its own cost and expense, commercial general liability insurance on a per occurrence form, including broad form coverage for contractual liability, property damage, products liability and personal injury liability (including bodily injury and death), waiving subrogation, all which is satisfactory to Licensor, in the amount of $5,000,000 of primary and umbrella coverage from one or more insurance companies, each with a Best's rating of "A" or better, and qualified to transact business in the territories where the Licensed Stores and Shop- within-a-Shops are located. Licensee also agrees to maintain in full force and effect at all times while this Agreement is in effect such Worker's Compensation Insurance as is required by applicable law and Employer's Liability Insurance with coverage as is customary for similarly situated companies. All insurance shall be primary and not contributory. All of said insurance shall: (a) provide for coverage resulting from claims reported after the policy period; (b) name Licensor as an additional insured; and (c) provide for at least thirty (30) days' prior written notice to Licensor of any cancellation, modification, surrender, or any other action that would affect Licensor's status or benefits thereunder. During the term of this Agreement, Licensee shall promptly furnish or cause to be furnished to Licensor evidence, in form and substance satisfactory to Licensor, of the maintenance and renewal of the insurance required herein, including copies of policies with applicable riders and endorsements, certificates of insurance, and continuing certificates of insurance. Contemporaneously with the execution and delivery of this Agreement, evidence of the full force and effect of the insurance required herein shall be delivered to Licensor. In all events, Licensor shall under no circumstances operate any Licensed Stores or Shop-within- a-Shops at any time or times when Licensee knows or should know that the insurance required herein has not been acquired, has been cancelled or for any other reason is not in full force and effect. Nothing contained in this Section 13 shall be deemed to limit in any way the indemnification provisions of Section 11.

14. MISCELLANEOUS

14.1 Independent Contractor. Neither Party is and shall not represent itself to be a subsidiary, affiliate, legal representative, agent, employee, or partner of the other Party or otherwise connected with the other Party, except Licensee as an independent distributor of the

Licensor Products in Shop-within-a-Shops, and neither Party shall have the authority to assume, create or incur any obligation or liability on behalf of the other Party.

14.2 Assignment. Nothing herein shall restrict Licensor from assigning or transferring any Licensed Marks to any Person; provided that any such transfer shall have no effect on the license granted to Licensee hereunder, and the Licensed Marks shall remain subject to this Agreement. This Agreement is personal to Licensee, and neither this Agreement nor any of the rights of Licensee hereunder shall be sold, transferred or assigned by Licensee by operation of law or otherwise, without the prior written consent of the Licensor. Any assignment, transfer, hypothecation, pledge or encumbrance of this Agreement by Licensee in violation of the foregoing shall be void from the beginning and constitute a material breach of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors (whether by contract, operation of law or otherwise) and permitted assigns.

14.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance herewith). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

Licensor shall send notices to Licensee as follows:

Kirkland's, Inc. 5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Amy Sullivan, President, Chief Executive Officer

W. Michael Madden, Executive Vice President and Chief Financial Officer With a copy to:

Kirkland's, Inc. 5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Carter Todd, General Counsel

Licensee shall send notices to Licensor as follows: Beyond, Inc.

799 W. Coliseum Way Midvale, UT 84047
Attention: E. Glen Nickle, Chief Legal Officer

14.4 Governing Law; Forum; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Delaware, without giving effect to the conflict of law provisions of Delaware, and any action or proceeding arising out of, or related to, this Agreement, shall only be brought in an appropriate state or federal court in Delaware. The Parties expressly consent to venue in Delaware and to the personal jurisdiction of the Delaware courts. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

14.5 Waiver. Failure of either Party to enforce or exercise any of its rights with respect to any provisions hereof against the other Party shall not constitute a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to such Party's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by either Party of any of its rights hereunder shall not preclude or prejudice such Party from thereafter exercising the same or any other right which it may have under this Agreement.

14.6 Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. The word "including" shall be read as "including but not limited to" and otherwise shall be considered illustrative and non-limiting. All references to dollars or "$" in this Agreement will be to U.S. dollars. The language used in this Agreement will be construed, in all cases, according to its fair meaning, and not for or against either Party hereto. The Parties acknowledge that each Party has reviewed this Agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be available in the interpretation of this Agreement.

14.7 Successors and Assigns. This Agreement is entered into solely between, and may be enforced only by, the Parties and their permitted successors and assigns, and except as expressly set forth herein, this Agreement shall not be deemed to create any rights in third parties, including, without limitation, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

14.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, inoperative, or unenforceable, the remainder of this Agreement shall not be affected by such determination, and the remainder of this Agreement shall be given effect as if the invalid, inoperative, or unenforceable provision had not been included in this Agreement.

14.9 Equitable Relief; Cumulative Remedies. Licensee acknowledges that a breach of this Agreement by Licensee may cause Licensor irreparable damages, for which an award of damages would not be adequate compensation. In the event of such breach or threatened breach, Licensor will be entitled to seek equitable relief against Licensee without the obligation to post a bond or other security. Except as expressly set forth in this Agreement, the right and remedies

under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.

14.10 Entire Agreement and Modification. Except as otherwise set forth herein, the Parties agree that this Agreement contains the entire agreement between the Parties and there are no other oral statements, representations, warranties or other agreements between the Parties. This Agreement can only be modified, amended or supplemented in writing signed by authorized representatives of both Parties.

14.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different Parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract between the Parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each of Parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

LICENSOR:

BEYOND, INC.

By:__ Name:
Title:

LICENSEE:

KIRKLAND'S, INC.

By:__ Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

SCHEDULE A

Licensed Marks*

Registration Numbers	Trademarks	Services	IC
2510262	BED BATH & BEYOND	**Retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
1830725	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
1831709	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
2831985	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
2831986	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
6895084	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35
6895085	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35

Trademarks	**Registration/Serial Nos.**
Overstock.com	2939764
Baby and Beyond	98373503
Overstock.com Your Online Outlet	3069011

Overstock.com	98452509

*Licensee acknowledges and agrees (i) that Licensee's rights are limited to the Licensed Marks above and (ii) that Licensee shall only use the Licensed Marks in the exact form as listed above (including any logos and/or artwork files provided by Licensor, if any), unless otherwise approved in writing by Licensor. Licensee further acknowledges and agrees that this Agreement does not grant, and Licensee shall not have, any rights with respect to any other trademark, label, logo, or the like, owned or used by Licensor, all of which are expressly reserved to Licensor.

SCHEDULE B

Licensee Affiliates

1. Kirkland's DC, Inc., a Tennessee corporation
2. Kirkland's Stores, Inc., a Tennessee corporation
3. Kirkland's Texas, LLC, a Tennessee limited liability company

EXHIBIT D

Form of Overstock.com First Cost Supplier Agreement

[see attached]

FIRST COST SUPPLIER AGREEMENT

This First Cost Supplier Agreement (the "Agreement") is entered into as of September 26, 2024 ("Effective Date") between Beyond, Inc. ("Beyond") and the supplier identified herein ("Supplier"). This Agreement establishes the terms and conditions for the sale of Supplier's products ("Products") on websites owned or operated by Beyond ("Sites") or owned or operated by third parties who permit Beyond to sell products through such websites ("Third Party Sites"). Beyond and Supplier may be referred to individually as a "Party" and collectively as "Parties."

1. BEYOND'S RESPONSIBILITIES.

a. Establish the price at which the Products will be sold through the Sites and/or the Third Party Sites ("Site Price").

b. Advertise, display, promote and sell the Products through the Sites and Third Party Sites. Beyond reserves the right to: not list Products on, remove Products from, or suspend or terminate Supplier's ability to list Products on the Sites and Third Party Sites in Beyond's sole discretion at any time without notice. Beyond reserves the right, but not the obligation, to edit, optimize, remove and/or block any Supplier Content, as defined in Section 2(b) of this Agreement, without notice in Beyond's sole discretion.

c. Respond to customer inquiries and complaints.

d. Pay Supplier the negotiated wholesale cost ("First Cost") per Product.

e. Remit payments within 2 business days of the 1st and 16th of each month for Products sold, subject to offsets. Payments shall be made net 37 from shipment confirmation date. Beyond's monetary obligations to Supplier shall be net of all indemnity or other offsets. If this Agreement expires or is terminated, Beyond will withhold payment from Supplier to cover costs and fees related to returns which may accrue beyond termination for a period not to exceed 90 days. If Supplier's actions or performance result in Claims, as defined in Section 7(a) of this Agreement, disputes, violations of Beyond's terms or Policies, as defined in Section 2(j) of this Agreement, or other risks to Beyond or third parties, Beyond may withhold payment to Supplierfor as long as Beyond determines any related risks persist. If Beyond determines Supplier or Supplier's account has been used to engage in deceptive, fraudulent, or illegal activity, Beyond may permanently withhold payment to Supplier.

2. SUPPLIER'S RESPONSIBILITIES.

a. Provide any Supplier identifying information that Beyond requests. Failure to provide requested information or providing false information may result in Beyond's termination of this Agreement and any Supplier privileges arising from this Agreement.

b. Provide Product content including images, text, warranty, disclaimers, warnings, country of origin, product dimensions, product weight, shipping dimensions, shipping weight, photographs, copy, content, descriptions, submissions, video, audio, advertisements and any other information requested ("Supplier Content") in the format requestedby Beyond, and to update Supplier Content from time to time to ensureall Supplier Content remains accurate and legal.

c. Include an approved packing insert for each order, including disclaimers and warning labels, if required by international, federal,

state or local law, regulation, ordinance, administrative order or rule ("Laws").

d. Remove all unapproved information in the Products and packaging, including but not limited to all third party marketing information, pricing tickets and other materials not directly from the manufacturer.

e. Respond to Beyond's requests within **1** business day.

f. Pay all of the applicable fees specified in Schedule A.

g. Notify Beyond of any discrepancies or claims for payment by email (partnermaysupport@beyond) within 60 days of the date Beyond paid Supplier for the Product. If Supplier fails to do so, Supplier will be deemed to have waived any such claim.

h. Notify Beyond immediately in writing if Supplier receives notice of non-compliance of Laws.

i. Provide records confirming the authenticity of Supplier's Products and Supplier's right to use Supplier Content upon request fromBeyond, which may be required at any time.

j. Comply with any and all policies made available to Supplier within the help section of the Supplier Oasis Portal or otherwise communicated to Supplier in writing (email sufficient) ("Policies" or "Policy").

3. SHIPPING. Supplier shall ship Products via Beyond's designated carrier on Beyond's shipping account **("3PB").** Accessorial shipping charges that are included by Supplier (including, but not limited to insurance and delivery confirmation) which have not been requested by Beyond will be deducted from Supplier's payments. If Supplier fails to bill Beyond's shipping account for an Beyond order, Supplier shall notify Beyond within 60 days of the shipment. If Supplier fails to do so, Supplier will be responsible for the cost of transportation. Beyond reserves the right to offset Supplier's payments for all charges which have not been authorized, not been properly deducted or that result from Supplier's error, as reasonably determined by Beyond. Supplier will not ship non-Beyond merchandise on Beyond's shipping account. If the Product is damaged or lost and is eligible for a claim from the carrier, Supplier shall be responsible for filing claims directly with Beyond's carrier to recoverthe cost of the Product within 30 days cifthe loss and Beyond shall beresponsible for and shall file claims directly with Beyond's carrier to recover the cost of transportation. If Supplier fails to file a claim with Beyond's carrier for eligible damaged or lost Products within 30 daysofthe loss, Beyond may offset Supplier's payments for the actual freight charges related to such shipment. Supplier shall make reasonableefforts to record the B'eyond order number in the carrier reference number field for each tracking number. If Supplier fails to record a valid Beyond order number in the reference number field, Beyond may refuse the transportation charges and Supplier may be charged for the transportation.

a. Additional Shipping Requirements.

1) Supplier shall ship and ship-confirm each Product by the immediately succeeding business day from receipt of the order, unless a longer time is permitted by Beyond. A Product shall only be

a. Small Parcel.

1) Beyond accepts, coordinates and processes some small parcel Product returns in facilities it controls.

2) Products returned to Beyond in resalable condition (as defined in Schedule A) will be received into Beyond's inventory, returned to Supplier, or disposed ofby Beyond.

considered shipped at the point of first scan by the carrier. In the event that the date on which the Product is shipped and the shipment confirmation date are not the same day, Beyond reserves the right to use the date which is later in time for purposes of payment processing under Section l(e) of the Agreement.

4. RETURNS.

3) Products returned to Beyond in non-resalable condition (as defined in Schedule A) will be returned to Supplier or disposed of by Beyond, in Beyond's sole discretion. The First Costof any Products returned to Supplier will be deducted from Supplier's semi-monthly payments as outlined in Schedule A.

b. LTL.

1) Beyond coordinates LTL Product returns.

2) LTL Products will be shipped directly from the customer back to Supplier.

3) If Supplier supplies a defective, damaged or wrong LTL Product, Supplier shall be solely responsible for all costs (freight, handling, coordination, replacement, etc.) related to the return of the **L**TL Product. If there is no defect, damage and the LTL Product was the item ordered by the customer, Beyond will arrange to ship the LTL Product back to the Supplier and will deduct the actual shipping charges from any refund due the customer and keep such deduction.

5. TERM & **TERMINATION.** This Agreement continues until terminated as set forth herein or as otherwise provided for in this Agreement. Either Party may terminate this Agreement for cause upon 7 days prior written notice if the other Party fails to cure the default within 7 days. Either Party may terminate this Agreement without cause upon 30 days prior written notice.

6. INSURANCE. Supplier shall obtain and maintain, at its own expense, commercial general liability insurance (including productsliability and/or umbrella coverage) in the amount of at least $1,000,000 per occurrence/ $2,000,000 aggregate. Supplier shall add Beyond as an additional insured. Supplier shall supply Beyond with certificates evidencing compliance with these obligations. All policies shall providethat the coverage shall not be decreased or terminated without at least 30days prior written notice to Beyond.

7. **INDEMNIFICATION.**

a. Supplier shall, at its own cost and expense, indemnify, defend and hold harmless Beyond, its directors, officers, employees, affiliates and agents against any and all allegations (even though such allegationsmay be false, fraudulent or groundless) asserted in any claim, action, lawsuit, investigation or proceeding ("Claim" or "Claims") arising out of or related to:

1) A breach by Supplier of this Agreement.

2) Claims of copyright, patent, trademark or other intellectual property right related to the Products.

labeling, safety, testing, importation and transportation thereof, and all representations and advertising are in compliance with all applicable Laws and Policies

9. PUBLICATION RIGHTS.

3) The death of or injury to a person or property arising outof or related to the Products.

4) The failure of the Products to comply with any express orimplied warranties.

5) The packaging, packing, tagging, labeling or advertisingof such Products.

6) The failure to provide adequate warnings and/or instructions related to the use, assembly, service or installation of such Products.

7) Violation by Supplier, Supplier Content, or the Products of applicable Laws or Policies.

b. Beyond will promptly notify Supplier of all Claims. Beyondwill tender the defense ofall Claims, or the applicable portion of the Claimto Supplier. Supplier's choice of counsel shall be reasonably satisfactoryto Beyond. Supplier shall have control over the defense of such Claims, or Supplier's applicable portion of the Claim; except that Supplier shall not settle or compromise Claims that impair or impose anyobligation on Beyond without Beyond's prior written consent. Beyond may participate in the defense of all Claims with counsel of its own choice at its own expense. If Supplier fails to respond or defend, Beyond will assume the defense of the Claim at Supplier's expense. If a judgment is rendered against Beyond, Supplier shall promptly pay such judgment or appeal as permitted under applicable law.

8. WARRANTIES. Supplier makes the following warranties:

a. Supplier has the right and ability to sell the Products on the Site

b. All Products are genuine and authentic as to the brands

c. All materials, and purposes represented, are legal for sale, and are notcounterfeit or unauthorized duplications.

d. Supplier understands that failing to fulfill Suppliers obligations for any of Supplier's Products or this Agreement are legallyactionable by Beyond and/or Beyond's customers.

e. Unless otherwise agreed in writing, all Products are new, first-quality merchandise, free from all material defects in workmanship anddesign and are in the original manufacturers' retail packaging. Where Beyond permits Supplier to supply refurbished or reconditioned Products,
Supplier will disclose such fact in the Product title and copy and all such Products will be free from all material defects in workmanship and design and their appearance and functionality will be in "like-new" condition. Packaging for refurbished or reconditioned Products must specify that such Products have been refurbished.

f. All documentation and Supplier Content relating to the Products are materially accurate, current, complete and not misleading or otherwise deceptive.

g. Supplier is authorized to use and provide, or is the rights holder, for all Supplier Content and any other information or intellectual property Supplier provides.

h. All Products, including the production, sale, packaging.

CON IOENTIAL

a. Supplier grants Beyond a nonexclusive, royalty free, worldwide license to use, reproduce, display, distribute and publish the intellectual property associated with the Products with any advertisement, display, promotion or sale of Products.

b. During the Term, Supplier grants Beyond a nonexclusive, royalty free, worldwide, license to use, reproduce, display, distribute, publish, adapt, modify and re-format any and all Supplier Content and any other material submitted by Supplier to Beyond ("Materials"). Notwithstanding an expiration or termination of this Agreement, the licenses described in Section 9(a) and 9(b) continue until Supplier affirmatively and specifically notifies Beyond to discontinue use of the Materials.

c. Supplier agrees that the grant of the licenses set forth herein shall extend to third parties who publish and promote the Products through the Third Party Sites.

d. Notwithstanding anything to the contrary, nothing in this Agreement will prevent or impair Beyond's right to advertise, promote or sell Products without a license or permission as permitted under applicable law (e.g., fair use and first sale doctrine under copyrightlaw, referential use under trademark law, or a valid license from a third party).

10.CONFIDENTIALITY. During the Term of this Agreement, the Parties may exchange Confidential Information, which includes information regarding a Party not generally known to the public. Each will treat such Confidential Information as confidential and proprietary both during the Term and for a period of 3 years after the Term. Each Party agrees it will: (a) not use the Confidential Information for any purpose other than in performing its obligations under this Agreement;
(b) take reasonable precautions to maintain the confidentiality of the Confidential Information; and (c) not disclose or otherwise furnish the Confidential Information to any third party other than such Party's employees who need to know the Confidential Information to perform such Party's obligations under this Agreement, provided such employees are contractually obligated to such Party to maintain the confidentiality of the other Party's Confidential Information. Each Party agrees to be responsible for the violation of this clause by its employees and agents. Upon the termination or expiration of this Agreement, each Party shall return or destroy all ofthe other Party's Confidential Information in such Party's possession.

11. INTELLECTUAL PROPERTY OWNERSHIP. Beyond
retains all rights and is the exclusive owner of all information regarding customers, including but not limited to customers' names, addresses, telephone numbers, email addresses, purchase histories, payment

methods and browsing histories ("Customer Information"). Beyond retains all rights in its intellectual property ("Beyond IP") and nothing herein shall be construed as a transfer, license or sale of Beyond's intellectual property to Supplier. Supplier shall not use, publish, display,disseminate or copy the Customer Information or the Beyond IP without written permission. Except to fulfill Products as set forth in thisAgreement, Supplier will not (nor will it cause a third party to) contact any customer without the express written consent of Beyond. Except as otherwise set forth herein, Supplier retains all rights in its intellectual property and nothing shall be construed as a transfer or sale of Supplier'sintellectual property to Beyond.

12. LIMITATION OF LIABILITY. EXCEPT FOR SUPPLIER'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS, ORVIOLATION OF THE BEYOND IP, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT OR INCIDENTAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT FOR SUPPLIER'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS OR VIOLATION OF THE BEYOND IP, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN EXCESS OF THE AMOUNT OF MONEY PAID BY BEYOND TO SUPPLIER WITHIN THE 12 MONTH PERIOD PRECEDING THE ARISE OF THE CLAIM.

13. MISCELLANEOUS.

a. Assignment. Neither Party may assign, transfer or otherwise delegate this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

b. Waiver. Except for claims arising under Section 2(g) of this Agreement, the non-enforcement of any right by either party shall not preclude any future enforcement.

c. Modifications. Except for modifications to Schedule A, all modifications must be in writing, signed by both Parties.

d. Severability. The holding of any provision of this Agreementto be void, invalid or unenforceable shall not affect the validity of the other provisions of this Agreement.

e. Survival. The provisions of this Agreement relating to delivery of Products, payment offees; right ofoffset; confidentiality; disclaimers; warranties; limitation of liability; indemnification; law; severability; and this paragraph shall survive any termination or expiration of this Agreement.

f. Law. This Agreement shall be governed by Utah law. The state or federal courts in Salt Lake City, Utah shall have exclusive jurisdiction and venue over any controversy between the Parties. The prevailing Party shall be entitled to recover its reasonable attorney fees (including in-house counsel fees at customary rates) and costs from the non-prevailing Party.

g. Entire Agreement. This Agreement, Schedule A and any duly executed amendments and/or addendums referring to this Agreement constitute the complete statement of terms between the Parties withrespect to this Agreement's subject matter.

h. Tax. Each Party agrees to pay, collect, calculate, remit and be responsible for its respective applicable sales, use, value-added, income, excise, privilege, property, transfer, franchise and any other taxes ("Taxes") arising out of this Agreement. Beyond will collect, remit and pay Taxes to the appropriate taxing authorities only in those jurisdictions where legally required of Beyond. Supplier agrees to indemnify, defend and hold harmless Beyond from any Tax imposed or assessed on Beyond which is legally payable by Supplier.

i. Non-Solicitation. During the Term, and for a period of 6 months after the expiration or termination of this Agreement, neither Party will, directly or indirectly, solicit or employ any person employed by the other Party during the Term. Notwithstanding anything to the contrary, this non-solicitation provision shall not

restrict either Party from soliciting or employing a former employee of the other Party who has not been an employee of the other Party for at least 6 months.

j. Relationship. The relationship between the Parties is not an employment relationship, joint venture or partnership. Neither Party has the authority to act on behalf of the other or bind the other.

WHEREFORE, Beyond and Supplier have caused this Agreement to be executed by their authorized representatives identified below as of the Effective Date.

BEYOND, INC.

By: /s/ David J. Nielsen
Name: David J. Nielsen

Beyond Contact Information	
Partner Program Contact	partnerservices@Beyond
Partner Pay Support	partnerpaysupport@Beyond
Telephone Number	(801) 947-3100

Supplier: Kirkland's Inc
Supplier's Address: 5310 Maryland Way
Brentwood, TN 37027

By: /s/ Amy Sullivan
Name: Amy Sullivan
Title: CEO

Supplier Contact Information (Required)	
Primary Contact	Nikki.Jenkins@Kirklands.c
Accounting Contact	Anna.Wilhoit@Kirklands.co
Customer Service	Melody.Jubert@Kirklands.com
Technical Contact	Tramaine.Tall@Kirklands.com
Telephone Number	NA
Facsimile	NA

SCHEDULE A TO
FIRST COST SUPPLIER AGREEMENT

Schedule A is incorporated into the First Cost Supplier Agreement. Schedule A may be modified by Beyond at any time upon 30 days prior written notice. If Supplier does not agree to the proposed modifications, Supplier may terminate the First Cost Supplier Agreement in accordance with its terms.

DESCRIPTION	*FEE*
General Costs & Fees	
Allowance[1]	3.5 %
Marketing Allowance Fee[2]	0.0 o/o of First Cost
Supplier Oasis Transaction Fees[3]	Greater of $25 per billing cycle[4] (or) QrdeJ:sS Cost/Order 0-1,000 $0.50 1,001- 5,000 $0.45 5,001 - 10,000 $0.40 10,001- 50,000 $0.35 50,001- 100,000 $0.30 100,001+ $0.25
Unauthorized accessorial charges[6]	Actual
Returns Costs & Fees	
First Cost[7]	First Cost

' Beyond is authorized to deduct the Allowance from the First Cost of each Product sold to account for costs related to returns, customer service, shipping (including failure to expedite or upgrade an order, failure to ship a Product, failure to transmit a valid tracking nwnber to Beyond, and failure to ship and ship-confum a Product within Beyond's designated timeframe), as well as other reasonable costs and fees incurred by Beyond. For the first three months following the Effective Date, the Allowance will not change. Thereafter, Beyond may adjust the Allowance based on Supplier's performance monthly by transmitting an updated rate by email to Supplier. The shipment by Supplierofany Product after Beyond's transmission of the updated Allowance shall constitute Supplier's consent to such updated rate.

[2] Beyond is authorized to deduct the Marketing Allowance Fee from ilie First Cost. as defined in the applicable First Cost Supplier Agreement of each unit of inventory shipped or fulfilled as a marketing allowance fee. This fee will be used by Beyond in its sole and exclusive discretion for marketing internally and externally in an effort to generate sales across the Beyond platform. Beyond's use ofiliis fee is confidential and will not be disclosed due to its proprietary marketing strategies. Beyond reserves the right to adjust this fee on 30 days' prior written notice to Supplier.

[3] Transaction Fees accrue as a result of Overstock Services, Inc. ("OSTKS") providing you access to the Supplier Oasis Portal ("SOP"). Transaction Fees will be deducted by Beyond from funds Beyond owes you and paid to OSTKS. Your cost/order will be established by reviewing your prior 12 month order history with Beyond. If you do not have 12 months of order history, the initial cost/order will be $0.50. Transaction Fees will accrue when Supplier is integrated into the SOP and receives its first order and will continue until the immediately following January 31". On each February 1", the Supplier Oasis Transaction Fees will reset to the applicable cost/order based on the immediately prior calendar year's number of orders.

[4] Each month has 2 billing cycles. The I" billing cycle runs from the I" through the 15th of the month. The second billing cycle runs from the 16th through the end of the month.

[5] An "order" constitutes one or more items that are ordered togeilier, sourced to the same warehouse and shipped to the same address.

[6] Accessorial shipping charges that are included by Supplier (including, but not limited to insurance, delivery confirmation and overmax) which have not been requested by Beyond will be deducted from Supplier's payments. Beyond reserves ilie right to offset Supplier's payments for all charges which have not been authorized, not been properly deducted or that result from Supplier's error, as reasonably determined by Beyond.

[7] First Cost will be deducted from Supplier's payments if the Product is not resalable. A Product is not resalable if, upon return, it cannot be resold through the Site, in Beyond's reasonable judgment. A Product returned directly to Supplier is not resalable. A Product is resalable if, upon return, it can be resold through the Site, in Beyond's reasonable judgment.

AMENDMENT TO
MARKETPIACE FEE SCHEDULE

This Amendment to the Marketplace Fee Schedule ("Fee Schedule Amendment") is executed on this 26thday of September , 20 24 ("Amendment Effective Date") between Overstockcom Services, Inc. ("OSTKS") and the seller identified herein ("Seller").

WHEREAS, OSTKS and Seller previously entered into the Marketplace Agreement ("Agreement"); and WHEREAS, the parties desire to modify and amend the Agreement in accordance with this

Fee Schedule

Amendment;

NOW THEREFORE, in consideration of the promises and mutual covenants and other terms and conditions contained herein, and intending to be legally bound, the parties agree to modify, amend and supplement the Agreement as follows:

1. The "[CATEGORY /SUBCATEGORY]" line in the Marketplace Fee Schedule under the "PRODUCT FEES" heading is deleted and replaced with the following:

PRODUCT FEES	
CATEGORY/SUBCATEGORY	**PERCENT OF SITE PRICE**
ALL CATEGORIES	10%

2. All other provisions of the Agreement and the Marketplace Fee Schedule not modified by this Fee Schedule Amendment shall remain in full force and effect

IN WITNESS WHEREOF, OSTKS and Seller have caused this Fee Schedule Amendment to be executed by their duly authorized representatives identified below as of the Amendment Effective Date.

OVERSTOCK.COM SERVICES, INC.

OSTKS Authorized Signature

SELLER: Kirkland's Inc

Seller Authorized Signature

CEO

CLAIMS FILING AMENDMENT TO SUPPLIER AGREEMENT

This Claims Filing Amendment to the Supplier Agreement (the "Amendment") amends and modifies the Supplier Agreement (the "Agreement") in effect between Beyond, Inc. ("Beyond") and Kirkland's, Inc. ("Supplier"). Beyond and Supplier may be referred to individually as a "Party" and collectively as "Parties."

WHEREAS, Beyond and Supplier previously entered into the applicable Supplier Agreement ("Agreement");

WHEREAS, the parties desire to amend, modify and supplement the Agreement in accordance with the terms of this Amendment;

NOW THEREFORE, in consideration of the promises and mutual covenants and other terms and conditions contained herein, the Parties amend and modify the Agreement as follows:

1. **Section 3. SHIPPING** is deleted in its entirety and replaced as follows:

3. SHIPPING.

a. Supplier shall ship Products via Beyond's designated carrier on Beyond's shipping accounts ("3PB").

b. Accessorial shipping charges that are included by Supplier (including, but not limited to insurance and delivery confirmation) which have not been requested by Beyond will be deducted from Supplier's payments.

c. If Supplier fails to bill Beyond's shipping account for an Beyond order, Supplier shall notify Beyond within 60 days of the shipment. If Supplier fails to do so, Supplier will be responsible for the cost of transportation. Beyond reserves the right to offset Supplier's payments for all charges which have not been authorized, not been properly deducted or that result from Supplier's error, as reasonably determined by Beyond.

d. Supplier will not ship non-Beyond merchandise on Beyond's shipping accounts. If Supplier ships non-Beyond merchandise on Beyond's shipping accounts, Supplier will be responsible for the cost of transportation and any related charges and fees.

e. Supplier will provide Beyond with, and notify Beyond of any changes to, all locations and carrier account information utilized by Supplier to ship Products sold on the Sites and/or Third Party Sites and Supplier shall receive authorization from Beyond for each prior to shipping Products sold on the Sites and/or Third Party Sites. If Supplier fails to do so, Supplier will be responsible for the cost of transportation and any related charges and fees. Beyond reserves the right to offset Supplier's payments for all charges which have not been authorized as reasonably determined by Beyond.

f. Supplier shall make reasonable efforts to record the Beyond order number in the reference number field made available by the carrier upon shipment creation for each tracking number. If Supplier fails to record a valid Beyond order number in the reference number field, Beyond may refuse the transportation charges and Supplier may be charged for the transportation.

g. Supplier shall ship and ship-confirm each order by the immediately succeeding business day from receipt of the order, unless a longer time is permitted by Beyond. A Product shall only be considered shipped at the point of first scan by the carrier. In the event that the date on which the Product is shipped and the shipment confirmation date are not the same day, Beyond reserves the right to use the date which is later in time for purposes of Supplier Payment processing under Section l(f) of the Agreement and for assessment of fees under Schedule A.

2. **A new section** is added to the Agreement as follows:

CARRIER CLAIMS.

a. In the event a Product is damaged or not received by a customer and is eligible for a claim to be submitted to the carrier ("Carrier Claim"), Supplier authorizes Beyond to file all Carrier Claims on Supplier's behalf. Supplier waives its rights to file and/or dispute Carrier Claims and Supplier waives its rights to pursue legal action regarding Carrier Claims for any Products that are damaged or not received by a customer that are sold on the Sites and/or Third Party Sites.

1) For each Carrier Claim that is approved by the carrier, Supplier agrees to pay Beyond _15_% of the Product portion ("Product Claim") of a Carrier Claim ("Claims Filing Fee"). Supplier authorizes Beyond to deduct the Claims Filing Fee from Supplier's payments. Beyond reserves the right to adjust this fee on 30 days' prior written notice to Supplier, email sufficient.

2) In the event a Product Claim has been paid to Supplier, Beyond will deduct the Claims Filing Fee from Supplier's payments within 30 days of the date that Beyond receives notice from the carrier that the Product Claim was paid. In the event a Product Claim has been paid to Beyond, Beyond will deduct the Claims Filing Fee from the Product Claim amount and will remit the remainder to Supplier within 30 days of the date that Beyond receives notice from the carrier that the Product Claim was paid.

3) In the event the freight portion ("Freight Claim") of a Carrier Claim is paid to Supplier, Beyond will deduct the Freight Claim amount from Supplier's

payments within 30 days of the date that Beyond receives notice from the carrier that the Freight Claim was paid. In the event a Freight Claim has been paid to Beyond, Beyond shall retain the Freight Claim amount.

b. Supplier shall provide Beyond with Supplier's carrier account information, as requested in Exhibit A and Exhibit B, concurrently with the execution of this Amendment. If Supplier fails to provide Beyond with complete and accurate carrier account information as necessary for Beyond to file Carrier Claims on Supplier's behalf, Beyond may offset Supplier's payments for the freight charges related to such shipments and may remove Supplier's Products from the Sites and/or Third Party Sites.

3. **Effective date.** This Amendment becomes effective within 10 business days after Beyond's receipt of Supplier's carrier account information as requested in Exhibit A and Exhibit B and applies as of the date a Product is reported as damaged or not received by a customer, unless otherwise agreed to by Parties.

4. **Term.** This Amendment may be terminated by either Party at any time upon 30 days prior written notice.

5. The modifications made by this Amendment supersede any prior amendments to Section 3 SHIPPING of the Supplier Agreement, unless otherwise agreed to by Parties.

6. Nothing herein shall be construed as a waiver of any costs or fees set forth in Schedule A.

7. All other provisions of the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, Beyond and Supplier have caused this Amendment to be executed by their duly authorized representatives identified below and made effective as of the Amendment effective date.

BEYOND, INC.

By: David J. Nielsen

Name: David J. Nielsen

SUPPLIER: Kirkland's Inc.

CEO

Title

9/26/24

Date

EXHIBIT A

Supplier: Kirklands Inc.
Address: 5310 Maryland Way
City, state, zip code: Brentwood, TN, 37027
Phone: (877) 541 - 4855
Email: seth.kaltrider@gmail.com

To: UPS Claims Dept.

Dear Sir or Madam:

I hereby authorize Beyond to pursue all claims on behalf of Kirkland's Inc. (Supplier name) for any shipment billed Third Party to Beyond shipper numbers _____. The UPS account number(s) for Kirkland's Inc. (Supplier name) are _____. I also authorize UPS to make payments arising out of any claim directly to them at the following address:

Beyond, Inc.
799 W Coliseum Way
Midvale, UT, 84047

Thank you for your attention to this matter.

Supplier: Kirkland's Inc.
Name: Seth W. Kaltrider
By: /s/ Seth W. Kaltrider
Date: 9/26/24

EXHIBIT B

Supplier must provide the following details for all ship from locations, as listed on a recent carrier invoice (must be issued by carrier within the prior 3 weeks):

Small parcel (UPS)	**Location 1**	**Location *2***	**Location 3**	**Location 4**	**Location 5**
Account/Shipper#					
Ship from zip code	38301				
Invoice#					
Invoice date					
Control ID					
Invoice amount($)					

If Supplier utilizes more than 5 carrier accounts, provide information for additional accounts in a separate sheet.

Supplier must provide the following details, for all ship from locations, regardless of carrier or shipment type:

Shipping locations	Location 1	Location 2	Location 3	Location 4	Location 5
Address	431 Smith Lane				
City	Jackson				
State	TN				
Zip code	38301				
Contact name	Joel Duggin				
Contact email	joel.duggin@kirklands.com				
Contact phone	(731) 988 - 3509				

If Supplier ships from more than 5 locations, provide information for additional locations in a separate sheet.

PAYMENT TERMS AMENDMENT
TO
SUPPLIER AGREEMENT

This Payment Terms Amendment to Supplier Agreement ("Amendment") is executed on this 2filh day of September 2024 ("Amendment Effective Date") and amends and supplements the applicable Supplier Agreement ("Agreement") by and between Beyond, Inc. ("Beyond") and the supplier outlined herein, ("Supplier").

WHEREAS, Section I of the Agreement outlines the payment terms currently in effect;

WHEREAS, the parties hereto have agreed to modify the payment terms in the Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and other terms and conditions contained, and intending to be legally bound, the parties agree to modify, amend and supplement the Agreement as follows:

1. Beyond shall remit payments to Supplier within 2 business days of the I st and the 16th of each month for Products sold, subject to offsets. Payments shall be made net 37 from shipment confirmation date.

2. All other provisions of the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, Beyond and Supplier have caused this Amendment to be executed by their duly authorized representatives identified below as of the Amendment Effective Date.

BEYOND, INC.

David J Nielsen, Sep 6, 2024 11:50 MDT)

Beyond Authorized Signature

SUPPLIER: Kirkland's Inc

Supplier Authorized Signature

CEO

Title

EXHIBIT E

Illustration of Incentive Fee Calculation

Ecommerce Incentive Fee - Illustative Hypothetical

Note: Sales projections below are for illustration only – do not reflect actual performance or management projections

$000s

	Monthly Sales	TTM Sales	Change from Base	Aggregate Incentiv e Fee	Monthly Incentiv e Fee	TTM Incentiv e Fee
November 2023	$9,167					
December 2023	9,167					
January 2024	9,167					
February 2024	9,167					
March 2024	9,167					
April 2024	9,167					
May 2024	9,167					
June 2024	9,167					
July 2024	9,167					
August 2024	9,167					
September 2024	9,167					
October 2024	9,167	**110,000**				
November 2024	10,417	111,250	1,250	19	19	
December 2024	10,417	112,500	2,500	38	19	
January 2025	10,417	113,750	3,750	56	19	
February 2025	10,417	115,000	5,000	75	19	
March 2025	10,417	116,250	6,250	94	19	
April 2025	10,417	117,500	7,500	113	19	
May 2025	10,417	118,750	8,750	131	19	
June 2025	10,417	120,000	10,000	150	19	
July 2025	10,417	121,250	11,250	169	19	
August 2025	10,417	122,500	12,500	188	19	
September 2025	10,417	123,750	13,750	206	19	
October 2025	10,417	125,000	15,000	225	19	225
November 2025	12,500	127,083	17,083	256	31	
December 2025	12,500	129,167	19,167	288	31	
January 2026	12,500	131,250	21,250	319	31	
February 2026	12,500	133,333	23,333	350	31	
March 2026	12,500	135,417	25,417	381	31	
April 2026	12,500	137,500	27,500	413	31	
May 2026	12,500	139,583	29,583	444	31	
June 2026	12,500	141,667	31,667	475	31	
July 2026	12,500	143,750	33,750	506	31	
August 2026	12,500	145,833	35,833	538	31	
September 2026	12,500	147,917	37,917	569	31	
October 2026	12,500	150,000	40,000	600	31	375
November 2026	14,583	152,083	42,083	631	31	
December 2026	14,583	154,167	44,167	663	31	
January 2027	14,583	156,250	46,250	694	31	
February 2027	14,583	158,333	48,333	725	31	
March 2027	14,583	160,417	50,417	756	31	
April 2027	14,583	162,500	52,500	788	31	
May 2027	14,583	164,583	54,583	819	31	
June 2027	14,583	166,667	56,667	850	31	
July 2027	14,583	168,750	58,750	881	31	
August 2027	14,583	170,833	60,833	913	31	
September 2027	14,583	172,917	62,917	944	31	
October 2027	14,583	175,000	65,000	975	31	375

Exhibit 10.22

Execution Version
TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (this "Agreement") is entered into as of October 21, 2024 (the "Effective Date") by and between Beyond, Inc., a Delaware corporation ("Licensor"), and Kirkland's Inc., a Tennessee corporation ("Licensee") (each a "Party", and together, the "Parties").

WHEREAS, (i) Licensor and Kirkland's Stores, Inc., a Tennessee corporation and a subsidiary of Licensee ("Borrower") have entered that certain Term Loan Credit Agreement (the "Beyond Credit Agreement") pursuant to which, on the terms and subject to the conditions set forth therein, Beyond has made term loans to Borrower in the aggregate principal amount of $17,000,000, and (ii) Licensor and Licensee have entered into that certain Subscription Agreement (the "Subscription Agreement") pursuant to which, on the terms and subject to the conditions set forth therein, Licensee has agreed to issue and Licensor has agreed to subscribe for and purchase up to 4,324,324 shares of common stock of Licensee;

WHEREAS, in connection with and as a condition to the consummation of the transactions contemplated by the Beyond Credit Agreement and the Subscription Agreement (the "Financing Transactions"), concurrently herewith, the Parties have entered into that certain Collaboration Agreement for the purpose of engaging in various collaborative efforts and services regarding their respective business operations ("Collaboration Agreement"), including Licensee's operation of retail concept stores under Licensor's Trademarks identified on Schedule A ("Licensed Marks"), as may be modified by the Parties, upon the terms and conditions herein; and

WHEREAS, the Parties have agreed to enter into this Agreement concurrently with the closing of the transactions contemplated by the Beyond Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

"Annual Period" means each consecutive twelve (12) month period during the term of this Agreement commencing the 1st day of Licensee's fiscal calendar, as reported in Licensee's audited financial statements, and ending on the Saturday closest to the 31st day of January, except that the first Annual Period shall commence on the Effective Date and end on January 31, 2026.

"Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"Licensor Products" means those products that are sourced by or on behalf of Licensor for retail sale on Licensor's Bed, Bath & Beyond e-commerce site, overstock.com and such other branded retail channels as further described in the Collaboration Agreement.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

"Shop-within-a-Shop" means a space within a Licensee-branded brick-and-mortar retail store that is branded with the Licensed Marks and reflects branding elements associated with the Licensed Marks and in which Licensee promotes, features and sells solely Licensor Products. A "Shop-within-a-Shop" may take the form of a pop-up shop, semi-permanent shop-within-a-shop, designated merchandised or branded areas within stores, end-caps or other merchandising and promotional settings, in each case, as mutually agreed to in writing by the Parties.

"Trademark" means all trademarks, brand names, trade dress, logos and other identifiers of source, together with all registrations and applications for registration thereof.

2. LICENSE GRANTS

2.1 Neighborhood Format Brick-and-Mortar Stores. Subject to the terms and conditions of this Agreement, including payment of royalties pursuant to Section 6, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive (except as set forth in Section 2.2), non-transferable, non-sublicensable license to operate brick-and-mortar retail stores branded under the Licensed Marks, in each case, in an in-store format ranging from 7,000 to 15,000 sq. ft. per store location, (which shall, for avoidance of doubt, exclude Shop-within-a- Shops) (such format, a "Neighborhood Format"), pursuant to the Collaboration Agreement or otherwise approved in writing by Licensor from time to time ("Licensed Stores"), including the advertising, marketing and promotion of such Licensed Stores; provided that the aesthetics of the Licensed Stores, the assortment of products therein and the concentration of the vendors of such products shall be substantially consistent with the historical practice of Licensor and its Affiliates and its or their predecessors in connection with their operation of retail stores under the Licensed Marks, unless Licensee obtains Licensor's prior written consent to sell other products, which may be given or withheld in Licensor's sole and absolute discretion.

2.2 Exclusivity. During the term of this Agreement, directly or indirectly, Licensor shall not, and shall not grant a license or right to any Affiliate or third party to, operate any BED BATH & BEYOND or BABY & BEYOND branded brick-and-mortar retail stores in the Neighborhood Format in the United States.

2.3 Shop-within-a-Shops. Subject to the terms and conditions of this Agreement, including payment of royalties pursuant to Section 6, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, license to use

the BED BATH & BEYOND marks and associated branding elements owned by Licensor to create and operate a Shop-within-a-Shop at the locations and in the size and format mutually agreed upon by the Parties in writing from time to time, and to advertise, market and promote such Shop-within- a-Shops; provided that, in each Shop-within-a-Shop, Licensee shall solely promote, feature and sell Licensor Products as mutually agreed upon.

2.4 Subsidiaries. The licenses and rights set forth above and other rights set forth herein shall extend to each Licensee Affiliate set forth on Schedule B, but only for so long as they remain Affiliates of Licensee. Licensee shall be responsible for each such Licensee Affiliate's compliance with the terms of this Agreement.

2.5 New Trademarks. Schedule A may be updated by the Parties from time to time upon the Parties' mutual written agreement to reflect (i) a Trademark that uses, incorporates or modifies a Licensed Mark, and (ii) a Trademark acquired by Licensor and under which Licensee has the right to sell Licensed Products pursuant to Section 8 of the Collaboration Agreement.

3. OWNERSHIP AND USE RESTRICTIONS

3.1 Ownership, Goodwill and Reservation of Rights. Any rights not expressly granted in this Agreement are expressly reserved for Licensor. Licensor reserves all rights to the Licensed Marks except as specifically granted herein to Licensee and Licensor may exercise such rights at any time. Any and all goodwill arising from Licensee's and its sublicensees' use of the Licensed Marks shall inure solely to the benefit of Licensor. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this Agreement. Licensee is only licensed to use the Licensed Marks, and not any variations, adaptations, translations, abbreviations, localizations or derivatives thereof without the prior written consent of Licensor.

3.2 No Inconsistent Action. Licensee shall not take any action or fail to take any action that would reasonably be expected, in any material respect, to impair or reduce the value or strength of any Licensed Mark, the reputation of Licensor or any of its Affiliates, or the goodwill associated with or symbolized by any Licensed Mark.

3.3 Restrictions. Licensee acknowledges the validity and Licensor's sole and exclusive ownership of the Licensed Marks, and shall not, directly or indirectly, (a) assert any claim of ownership or right in the Licensed Marks, other than the rights expressly granted pursuant to the license hereunder, (b) interfere with, oppose, cancel or otherwise challenge Licensor's or its Affiliates' registrations or applications for registration of the Licensed Marks (including domain name registrations), (c) apply for, or participate with or cause any other entity to apply for, the registration of any Licensed Marks or any logo, symbol, trademark, service mark, company or corporate name, product name, domain name or commercial slogan that comprises or is confusingly similar to any of the Licensed Marks, or (d) challenge the ownership or use of the Licensed Marks by Licensor or its Affiliates or its or their licensees. For avoidance of doubt, except in connection with advertising and promotional campaigns using the Licensed Marks to promote the Licensor Products in the Neighborhood Format or Shop-within-a-Shops locations as approved by the Review Committee on a case-by-case basis, Licensee shall not have the right to use the Licensed Marks in any domain name or on or in connection with any online, mobile or other

electronic stores or social media accounts. Any violation of the foregoing shall be deemed a material and uncurable default hereunder.

3.4 Confusing Use. Licensee shall not use the Licensed Marks in any manner likely to cause confusion or doubt in the mind of the public as to the ownership and control thereof or in any manner that does not make clear that the Licensed Marks are owned and controlled exclusively by Licensor. In addition, except to the extent approved in writing by Licensor, Licensee shall not use or co-mingle with the Licensed Marks any other trademarks, characters or properties, whether owned by Licensee or another, so as to suggest that such other trademarks, etc. may have been created or may be owned, controlled, licensed or approved by Licensor or that they are in any way related to the Licensed Marks or Licensor.

3.5 Customer Complaints. Licensee shall, in connection with its duty to use the Licensed Marks so as to promote the continuing goodwill thereof, give immediate attention and take necessary action to satisfy all legitimate customer complaints brought against Licensee in connection with the Licensed Stores or Shop-within-a-Shops or products or services provided therein. Licensee shall give Licensor notice within five (5) days of receipt of all complaints that might reasonably be expected to affect the good standing of the Licensed Marks or the reputation of Licensor and also of all complaints that might reasonably be expected to result in legal action between Licensor and any third party, and cooperate with Licensor upon request to achieve as good a reputation and press for the Licensed Marks as possible.

4. REGISTRATION, INFRINGEMENT AND ENFORCEMENT

4.1 Registration. Licensor shall, in its reasonable discretion, prosecute and maintain the applications and registrations for the Licensed Marks during the term of this Agreement at Licensor's sole cost and expense. Licensor may, in its discretion, seek to apply for the registration of New Trademarks in any jurisdiction. Licensee shall not seek to apply for the registration of the Licensed Marks or any New Trademarks.

4.2 Infringement; Enforcement. Licensee shall promptly inform Licensor in writing of any infringement, dilution, or other violation of a Licensed Mark of which Licensee becomes aware and shall reasonably cooperate with Licensor, at Licensor's reasonable expense, in the protection and defense of the Licensed Marks. Licensor shall, in its reasonable discretion, defend and enforce the Licensed Marks. For avoidance of doubt, Licensor shall have the sole and exclusive right, but not the obligation, to defend and enforce the Licensed Marks.

5. QUALITY CONTROL

5.1 Branding Guidelines. The Review Committee (as defined in the Collaboration Agreement) shall manage all matters that require the Parties' cooperation or consultation with each other under this Agreement. Licensee shall use the Licensed Marks in accordance with (a) the specifications set forth on Schedule A and (b) in a manner that is consistent with the branding guidelines provided by Licensor to Licensee in writing from time to time (the "Branding Guidelines"). Licensor agrees to consider in good faith any revisions to the Branding Guidelines that are proposed by the Review Committee; however, Licensor shall have the right to accept or reject any such proposals in its sole discretion. Licensee shall obtain Licensor's prior written approval or approval of the Review Committee for all advertising, marketing and promotional

materials bearing the Licensed Marks, which approval shall not be unreasonably withheld, conditioned or delayed.

5.2 Quality Standards. The quality of the goods and services sold, provided or otherwise commercialized by Licensee in the Licensed Stores and Shop-within-a-Shops will be of the same or higher quality as the goods and services sold, provided, or otherwise commercialized by Licensor and its Affiliates and its or their predecessors in connection with the Licensed Marks at its or their brick-and-mortar stores historically, and at least of a quality so as to maintain the value, reputation and goodwill of Licensor, its Affiliates and the Licensed Marks. Licensee agrees to undertake any actions that Licensor may reasonably request to assist Licensor in inspecting and monitoring the quality of the goods and services offered in the Licensed Stores and Shop-within- a-Shops and the use of the Licensed Marks in connection with such goods and services.

5.3 Compliance with Law. Licensee shall only use the Licensed Marks in compliance with applicable laws, and shall comply with all applicable laws and obtain all appropriate governmental approvals pertaining to (a) the operation of Licensee's business, (b) the sale, provision, or other commercialization of goods and services in the Licensed Stores and Shop- within-a-Shops, and (c) any other activities conducted by Licensee in association with the Licensed Marks.

5.4 Notices and Legends. In all uses of the Licensed Marks, Licensee shall include all notices and legends with respect to the Licensed Marks as reasonably requested by Licensor, and,

to the extent practical, shall place the symbols "®", "™" or "℠", as applicable, or other designations legally required or useful for enforcement of trademark or service mark rights, next to the Licensed Marks consistent with the same manner in which Licensor and its Affiliates use such symbols or other designations.

6. FEES AND PAYMENT

6.1 Royalties. Licensee shall pay to Licensor a royalty of three percent (3%) on all Net Sales of products and services sold through the Licensed Stores and Shop-within-a-Shops (inclusive of buy-online-pay-in-store (BOPIS) amounts generated from Licensor e-commerce websites), which shall increase to five percent (5%) upon any expiration or termination of the Collaboration Agreement, less the amount of Guaranteed Minimum Royalty paid with respect to such period (the "Sales Royalty").

6.2 Guaranteed Minimum Royalty. Commencing upon the opening of the first licensed Neighborhood Format location, Licensee shall pay to Licensor a "Guaranteed Minimum Royalty" of Sales Royalties, in the aggregate, equal to (a) two-hundred thousand dollars ($200,000) over the first twenty-four (24) months of the term of this Agreement (payable in monthly installments) and (b) three-hundred thousand dollars ($300,000) per Annual Period (twenty-five thousand dollars ($25,000) payable per month) thereafter, pro-rated for any partial Annual Period.

6.3 Net Sales. As used herein, "Net Sales" means mean the gross sales (the gross invoice amount billed customers) of products and services (including sales of warranty policies, insurance and other similar products and services) based on the invoiced price to such customers by or on behalf of Licensee, less only the following actual and allowable deductions: (a) returns

(or destruction in place) that Licensee actually authorizes and, for returns, Licensee actually receives, (b) allowances (defined as credits to a customer after delivery, including credits for returns, promotions and markdowns), (c) trade discounts (defined as reductions in the list wholesale selling price that are customary in the trade) that Licensee actually grants in writing prior to delivery, and (d) sales tax (but only to the extent the same appear separately on Licensee's invoice), provided that "Net Sales" shall include any products shipped to a customer in exchange for returned products. No deduction shall be made for any other discounts, uncollected accounts, commissions, levies, duties, or for the cost of any expenses, direct or indirect, incurred in operating or selling products or services through the Licensed Stores and Shop-within-a-Shops. "Net Sales" also includes insurance proceeds received by Licensee in respect of products and services sold through the Licensed Stores and Shop-within-a-Shops, but only to the extent that such insurance proceeds paid with respect to any such products exceed Licensee's cost incurred for such products and services. In all events, the total of any and all deductions taken by Licensee pursuant to this Section in calculating "Net Sales" shall not exceed the actual amount of all allowable deductions or six percent (6%) of the total amount of gross sales, whichever amount is less, during any Annual Period.

6.4 Payment. The Guaranteed Minimum Royalty for each month during an Annual Period shall be paid within thirty (30) days after the end of such month during the term of this Agreement (or portion thereof in the event of prior termination for any reason). The Sales Royalty hereunder shall be accounted for and paid monthly within thirty (30) days after the close of each month during the term of this Agreement (or portion thereof in the event of prior termination for any reason). The Sales Royalty payable for each month shall be computed on the basis of Net Sales during such month, and shall be reduced by the amount of the Guaranteed Minimum Royalty paid for such month. All payments to Licensor under this Agreement shall be paid in U.S. Dollars, by wire transfer in accordance with the wire instructions provided by Licensor. Wire transfer fees as well as all other bank fees related to any payments required of Licensee under this Agreement shall be the sole expense of Licensee, so that Licensor shall receive the full amount of all payments without reduction.

6.5 Taxes. All payments made by the Licensee under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, turnover, sales, value added stamp or other taxes, government withholding tax, levies, imposts, duties, charges, fees, deductions or withholdings (individually or collectively, "Taxes"), now or hereafter imposed, levied, collected, withheld or assessed by any tax or other governmental authority. In the event that any Taxes are now or hereafter required to be imposed, levied, collected, withheld, paid and/or assessed under applicable law from, or in respect of, any amount otherwise payable to the Licensor hereunder, then (x) the Licensee shall pay over to the relevant governmental authority the amount of such Taxes required to be paid by it under applicable law,
(y) the Licensee shall deliver to the Licensor as soon as practicable after the Licensee's payment of such Taxes a certified copy of a receipt issued by the relevant governmental authority evidencing such payment or such other evidence of such payment reasonably satisfactory to the Licensor, and (z) the amount so payable by the Licensee to the Licensor shall be increased and grossed-up to the extent necessary to yield to the Licensor the amount specified in the Agreement as being payable to the Licensor had such Taxes not been imposed, levied, collected, withheld, paid and/or assessed (including with respect to any increased and gross-up amounts). To the extent any such Taxes are paid or payable by the Licensor, a certificate delivered to the Licensee by the

Licensor as to the amount of such Taxes shall be conclusive absent manifest error and the Licensee shall pay to the Licensor the required grossed-up amount within 10 days after the Licensor's deliver of such certificate.

6.6 Late Payments. Licensee shall pay interest on any amounts owed but not paid by the applicable due date at a rate equivalent to the applicable Prime Rate (as defined in the Collaboration Agreement) per annum from the date such payment was due (but not more than the maximum rate of interest which legally can be paid).

6.7 Sales Statement.

(a) Licensee shall deliver to Licensor at the time each Sales Royalty payment is due, a statement signed by a duly authorized officer of Licensee and certified by him or her as accurate indicating per Licensed Store and Shop-within-a-Shop: (a) by product category, by style number, by customer and in the aggregate, the number and aggregate invoice price of all products and services sold through the Licensed Stores and Shop-within-a-Shops during the period covered by such Sales Royalty payment and the amount of discounts, allowances, returns and any other deductions from gross sales, (b) a separate list of all SKUs of Licensor Products actually sold during the reporting period, (c) the amount of any insurance proceeds received by Licensee in respect of products and services during said period, and setting forth a computation of the amount of Sales Royalty payable hereunder for said period ("Sales Statement"). The reporting period for each Sales Statement shall be the prior calendar month, and the format of the Sales Statement shall be mutually agreed upon by the Parties. Such statement shall be furnished to Licensor whether or not any products or services have been purchased during the reporting period for which such statement is due. A copy of the foregoing reports shall be sent to Licensor in Excel format.

(b) In addition to the Sales Statement for the final calendar month of each Annual Period, Licensee shall deliver to Licensor, not later than sixty (60) days after the close of each Annual Period (or portion thereof in the event of prior termination for any reason), a statement signed and certified by its chief executive or financial officer relating to said entire Annual Period, setting forth the same information required to be submitted by Licensee in accordance with Section 6.7(a).

7. BOOKS AND RECORDS; AUDITS.

(a) Licensee shall prepare and maintain, in such manner as will allow its accountants to audit same in accordance with generally accepted accounting principles, separate, complete and accurate books of account and records (specifically including the originals or copies of documents supporting entries in the books of account) covering all transactions arising out of or relating to this Agreement. Licensor and its duly authorized representatives, may, during regular business hours at times agreed upon by the Parties and with at least thirty (30) days prior written notice, for the duration of this Agreement and for three (3) years thereafter, audit said books of account and records and examine all other documents and material in the possession or under the control of Licensee as necessary to verify Licensee's compliance with its obligations under this Agreement; and Licensor shall have free and full access thereto for said purposes and for the purpose of making abstracts therefrom and copies thereof. All copies and information accessed, produced or obtained in connection with such audit is the Confidential Information of Licensee and shall be protected as such under Section 4 of the Collaboration Agreement. Any such audit

commenced within such period may continue through completion in the ordinary course; provided, that such audit is conducted in a manner designed to minimize disruption to Licensee's business. All such books of account, records and documents, including computer records, shall be kept available by Licensee for at least three (3) years (or such longer period as required by law) after the end of the term of this Agreement and through the completion of any audit commenced prior to the end of such period.

(b) If any examination or audit discloses that the payments required to be made under this Agreement exceeded the payments actually made (each a "Shortfall"), Licensee shall pay the Shortfall together with interest on the Shortfall at a rate equivalent to the applicable Prime Rate (as defined in the Collaboration Agreement) per annum from the date such payment was due (but not more than the maximum rate of interest which legally can be paid). In addition, if any examination or audit discloses that the Shortfall exceeds four percent (4%) for any calendar month, Licensee shall also pay the cost of such examination or audit in addition to the Shortfall and interest. All payments due pursuant to this Section 7(b) shall be made within fifteen (15) days after Licensee receives notice thereof.

8. TERM AND TERMINATION

8.1 Term. The term of this Agreement will commence on the Effective Date and, subject to earlier termination under Section 8.2, will continue until the later of (a) the expiration or termination of the Collaboration Agreement, or (b) the expiration of the then-existing term or initial term (not to exceed five (5) years), as applicable, of the lease(s) for all Licensed Stores.

8.2 Termination for Breach. Without limiting any of Licensor's other remedies at law or in equity, Licensor may terminate this Agreement:

(a) on seven (7) Business Days' prior written notice (such notice effective upon expiration of the seven (7) Business Day notice period) if Licensee fails to (i) furnish the Sales Royalty when due and/or Sales Statements required hereunder, or (ii) pay any other undisputed amounts due or invoiced hereunder, such notice of termination shall become effective unless, within such seven (7) Business Day period, Licensee shall completely remedy the breach and furnish the required payments and/or report;

(b) on thirty (30) days' prior written notice (such termination effective upon expiration of the thirty (30) day notice period) for any other material breach of this Agreement by Licensee, in the event that Licensee fails to cure such breach within such thirty (30) day period; or

(c) if, in Licensor's reasonable opinion, Licensee's ability to perform under this Agreement is or will be impaired due to Licensee's financial inability to comply with its anticipated obligations under this Agreement; a petition in bankruptcy is filed by or against Licensee; Licensee is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law; Licensee discontinues its business; or a receiver is appointed for Licensee or Licensee's business and such receiver is not discharged within thirty (30) days.

8.3 Bankruptcy.

(a) No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this Agreement or exploit or in any way use the Licensed Marks if Licensor terminates this Agreement pursuant to Section 8.2(c).

(b) In the event of a Licensee bankruptcy proceeding, the Parties acknowledge and agree that: (i) this Agreement is an executory contract within the meaning of Section 365 of Bankruptcy Code; and (ii) as set forth in Section 14.2 below, Licensor, in its interest to safeguard its valuable interests (including, without limitation, the Licensed Marks), has relied on the particular identity, skill and knowledge of the Licensee and, as a result, this Agreement: (A) is personal in nature to the Licensee; (B) is an agreement of the type described by Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code; and (C) may not be assumed or assigned.

8.4 Effect of Termination. Within ten (10) days after the expiration or any termination hereof, Licensee shall pay to Licensor any Guaranteed Minimum Royalty installments and Sales Royalty then owed to it pursuant to this Agreement. Upon expiration or termination of this Agreement, the licenses granted by this Agreement shall immediately and automatically terminate, and Licensee shall cease and desist from all use of the Licensed Marks. Notwithstanding the foregoing, if Licensee is not in breach of this Agreement as of the date of termination or expiration, upon request from Licensee, Licensor will grant Licensee an additional six (6) month period to transition off the use of the Licensed Marks (the "Transition Period"), provided that Licensor determines, in its reasonable discretion, that there is no material risk of Licensee failing to pay the Sales Royalty for the Transition Period. This Agreement shall remain in effect during any such Transition Period (including Licensee's obligation to pay royalties pursuant to Section 6). The following provisions shall survive termination or expiration of this Agreement (or the Transition Period, if applicable): Sections 1, 3, 7 (for the time period set forth therein), 8.3, 8.4, 9, 10, 11, 12, 13 (for the time period set forth therein) and 14.

9. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (b) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

10. DISCLAIMER OF WARRANTIES

LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSED MARKS ARE LICENSED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND THAT LICENSOR DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE LICENSED MARKS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY IMPLIED WARRANTY OF NONINFRINGEMENT, SUFFICIENCY, QUALITY, USEFULNESS, COMMERCIAL UTILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE).

11. INDEMNIFICATION

11.1 Indemnification by Licensor. Licensor shall indemnify, defend and hold harmless Licensee and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensee Indemnitees") from and against any and all damages, losses, liabilities, costs, expenses and other payments ("Losses") resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensee Indemnitees to the extent such Losses arise out of or are in connection with allegations that Licensee's use of a Licensed Mark in compliance with this Agreement infringes, dilutes or otherwise violates the intellectual property rights of a third Person.

11.2 Indemnification by Licensee. Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensor Indemnitees") from and against any and all Losses resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensor Indemnitees to the extent such Losses arise out of or are in connection with (a) Licensee's operation of the Licensed Stores or Shop-within-a-Shops, including the sale, distribution and other commercialization of products and services through the Licensed Stores or Shop-within-a-Shops, with the exception of claims for which Licensor is required to indemnify the Licensee Indemnitees pursuant to Section 11.1, or (b) Licensee's breach of this Agreement.

11.3 Indemnity Procedures. If any claim or action is asserted against any Licensee Indemnitee or Licensor Indemnitee (each, an "Indemnified Party") that would entitle such Indemnified Party to indemnification pursuant to this Section 11 (a "Proceeding"), the Indemnified Party will give prompt written notice thereof to the other party (the "Indemnifying Party"); provided, however, that the failure of any Indemnified Party to give timely notice hereunder will not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party demonstrates actual damage caused by such failure. The Indemnifying Party may elect to direct the defense or settlement of any such Proceeding by giving written notice to the Indemnified Party, which election will be effective immediately upon receipt by the Indemnified Party of such written notice of election. The Indemnifying Party will have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnifying Party deems it advisable to do so, all at the expense of the Indemnifying Party; provided that the Indemnifying Party will not settle, or consent to any entry of judgment in, any Proceeding without obtaining either: (a) an unconditional release of the Indemnified Party from all liability with respect to all claims underlying such Proceeding; or (b) the prior written consent of the Indemnified Party. An Indemnified Party will not settle, or consent to any entry of judgment, in any Proceeding without obtaining the prior written consent of the Indemnifying Party. Each Indemnifying Party and Indemnified Party will fully cooperate with each other in any such Proceeding and will make available to each other any books or records useful for the defense of any such Proceeding.

12. LIMITATION OF LIABILITY

WITH THE EXCEPTION OF LICENSOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 AND LIABILITY ARISING FROM LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE MAXIMUM EXTENT PERMITTED

BY LAW, LICENSOR SHALL NOT BE LIABLE UNDER THIS AGREEMENT TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY) OR CONTRIBUTION, AND IRRESPECTIVE OF WHETHER LICENSOR OR ANY RELATED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

13. INSURANCE

Simultaneously with the execution of this Agreement, Licensee shall promptly obtain and maintain in full force and effect at all times during the term of this Agreement and for at least three (3) years thereafter, at its own cost and expense, commercial general liability insurance on a per occurrence form, including broad form coverage for contractual liability, property damage, products liability and personal injury liability (including bodily injury and death), waiving subrogation, all which is satisfactory to Licensor, in the amount of $5,000,000 of primary and umbrella coverage from one or more insurance companies, each with a Best's rating of "A" or better, and qualified to transact business in the territories where the Licensed Stores and Shop- within-a-Shops are located. Licensee also agrees to maintain in full force and effect at all times while this Agreement is in effect such Worker's Compensation Insurance as is required by applicable law and Employer's Liability Insurance with coverage as is customary for similarly situated companies. All insurance shall be primary and not contributory. All of said insurance shall: (a) provide for coverage resulting from claims reported after the policy period; (b) name Licensor as an additional insured; and (c) provide for at least thirty (30) days' prior written notice to Licensor of any cancellation, modification, surrender, or any other action that would affect Licensor's status or benefits thereunder. During the term of this Agreement, Licensee shall promptly furnish or cause to be furnished to Licensor evidence, in form and substance satisfactory to Licensor, of the maintenance and renewal of the insurance required herein, including copies of policies with applicable riders and endorsements, certificates of insurance, and continuing certificates of insurance. Contemporaneously with the execution and delivery of this Agreement, evidence of the full force and effect of the insurance required herein shall be delivered to Licensor. In all events, Licensor shall under no circumstances operate any Licensed Stores or Shop-within- a-Shops at any time or times when Licensee knows or should know that the insurance required herein has not been acquired, has been cancelled or for any other reason is not in full force and effect. Nothing contained in this Section 13 shall be deemed to limit in any way the indemnification provisions of Section 11.

14. MISCELLANEOUS

14.1 Independent Contractor. Neither Party is and shall not represent itself to be a subsidiary, affiliate, legal representative, agent, employee, or partner of the other Party or otherwise connected with the other Party, except Licensee as an independent distributor of the

Licensor Products in Shop-within-a-Shops, and neither Party shall have the authority to assume, create or incur any obligation or liability on behalf of the other Party.

14.2 Assignment. Nothing herein shall restrict Licensor from assigning or transferring any Licensed Marks to any Person; provided that any such transfer shall have no effect on the license granted to Licensee hereunder, and the Licensed Marks shall remain subject to this Agreement. This Agreement is personal to Licensee, and neither this Agreement nor any of the rights of Licensee hereunder shall be sold, transferred or assigned by Licensee by operation of law or otherwise, without the prior written consent of the Licensor. Any assignment, transfer, hypothecation, pledge or encumbrance of this Agreement by Licensee in violation of the foregoing shall be void from the beginning and constitute a material breach of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors (whether by contract, operation of law or otherwise) and permitted assigns.

14.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance herewith). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

Licensor shall send notices to Licensee as follows:

Kirkland's, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Amy Sullivan, President, Chief Executive Officer

W. Michael Madden, Executive Vice President and Chief Financial Officer With a copy to:

Kirkland's, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Carter Todd, General Counsel

Licensee shall send notices to Licensor as follows: Beyond, Inc.

799 W. Coliseum Way Midvale, UT 84047
Attention: E. Glen Nickle, Chief Legal Officer

14.4 Governing Law; Forum; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Delaware, without giving effect to the conflict of law provisions of Delaware, and any action or proceeding arising out of, or related to, this Agreement, shall only be brought in an appropriate state or federal court in Delaware. The Parties expressly consent to venue in Delaware and to the personal jurisdiction of the Delaware courts. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

14.5 Waiver. Failure of either Party to enforce or exercise any of its rights with respect to any provisions hereof against the other Party shall not constitute a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to such Party's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by either Party of any of its rights hereunder shall not preclude or prejudice such Party from thereafter exercising the same or any other right which it may have under this Agreement.

14.6 Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. The word "including" shall be read as "including but not limited to" and otherwise shall be considered illustrative and non-limiting. All references to dollars or "$" in this Agreement will be to U.S. dollars. The language used in this Agreement will be construed, in all cases, according to its fair meaning, and not for or against either Party hereto. The Parties acknowledge that each Party has reviewed this Agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be available in the interpretation of this Agreement.

14.7 Successors and Assigns. This Agreement is entered into solely between, and may be enforced only by, the Parties and their permitted successors and assigns, and except as expressly set forth herein, this Agreement shall not be deemed to create any rights in third parties, including, without limitation, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

14.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, inoperative, or unenforceable, the remainder of this Agreement shall not be affected by such determination, and the remainder of this Agreement shall be given effect as if the invalid, inoperative, or unenforceable provision had not been included in this Agreement.

14.9 Equitable Relief; Cumulative Remedies. Licensee acknowledges that a breach of this Agreement by Licensee may cause Licensor irreparable damages, for which an award of damages would not be adequate compensation. In the event of such breach or threatened breach, Licensor will be entitled to seek equitable relief against Licensee without the obligation to post a bond or other security. Except as expressly set forth in this Agreement, the right and remedies

under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.

14.10 Entire Agreement and Modification. Except as otherwise set forth herein, the Parties agree that this Agreement contains the entire agreement between the Parties and there are no other oral statements, representations, warranties or other agreements between the Parties. This Agreement can only be modified, amended or supplemented in writing signed by authorized representatives of both Parties.

14.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different Parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract between the Parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each of Parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF. the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

LICENSOR:

BEYOND, INC.

By:__ Name:
Title:

LICENSEE:

KIRKLAND'S, INC.

By: /s/ W. Michael Madden

Name: W. Michael Madden
Title: Executive Vice President and Chief Financial Officer

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

LICENSOR:

BEYOND, INC.

By: /s/ Marcus Lemonis
Name: Marcus Lemonis
Title: Executive Chairman

LICENSEE:

KIRKLAND'S STORES, INC.

By:__ Name:
Title:

[Signature Page to Trademark License Agreement]

SCHEDULE A

Licensed Marks*

Registration Numbers	Trademarks	Services	IC
2510262	BED BATH & BEYOND	**Retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
1830725	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
1831709	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
2831985	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
2831986	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
6895084	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35
6895085	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35

Trademarks	**Registration/Serial Nos.**
Overstock.com	2939764
Baby and Beyond	98373503
Overstock.com Your Online Outlet	3069011

Overstock.com	98452509

*Licensee acknowledges and agrees (i) that Licensee's rights are limited to the Licensed Marks above and (ii) that Licensee shall only use the Licensed Marks in the exact form as listed above (including any logos and/or artwork files provided by Licensor, if any), unless otherwise approved in writing by Licensor. Licensee further acknowledges and agrees that this Agreement does not grant, and Licensee shall not have, any rights with respect to any other trademark, label, logo, or the like, owned or used by Licensor, all of which are expressly reserved to Licensor.

SCHEDULE B

Licensee Affiliates

1. Kirkland's DC, Inc., a Tennessee corporation
2. Kirkland's Stores, Inc., a Tennessee corporation
3. Kirkland's Texas, LLC, a Tennessee limited liability company



U.S. $25,000,000.00

LOAN AND SECURITY AGREEMENT

dated as of October 18, 2024 among

BMO Bank N.A.,
as Lender,

BEYOND, INC.,

as Borrower and

THE OTHER PARTIES HERETO THAT ARE DESIGNATED AS LOAN PARTIES

#82985354.6

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this Agreement, including all Schedules, Exhibits attached hereto or incorporated herein, the "Agreement"), dated as of October 18, 2024, is made and entered into by and among BEYOND, INC., a Delaware corporation (the "Borrower"), the other Loan Parties party hereto, and BMO BANK N.A., a national banking association (together with its successors and assigns, collectively, "Lender").

RECITALS:

The Borrower has requested that the Lender make a revolving line of credit available to the Borrower, and the Lender is willing to do so upon the terms and subject to the conditions set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions contained in this Agreement, and of any loans or other financial accommodations at any time made to or for the benefit of the Borrower by the Lender, the Loan Parties and the Lender agree as follows:

ARTICLE 1 - DEFINITIONS AND ACCOUNTING TERMS

Section 1.1. Defined Terms. As used in this Agreement, the following terms shall have the following respective meanings:

"Anti-Corruption Laws" means all Laws applicable to the Loan Parties or their Subsidiaries from time to time concerning or relating to bribery or corruption.

"Anti-Money Laundering Laws" means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including any applicable provision of the Patriot Act.

"Authorized Officer" means each officer designated by the Borrower to the Lender in writing from time to time, together with evidence of such officer's authority if requested by Lender.

"Availability" means, at any time the Revolving Facility Amount minus the Revolving Exposure.

"Availability Period" means the period from and including the Closing Date to but excluding the Maturity Date.

"Benchmark" means, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(a).

"Benchmark Replacement" means, means the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date,

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Lender, in its sole discretion, giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then- prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. Dollar-denominated bilateral credit facilities and (ii) the related Benchmark Replacement Adjustment.

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

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

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

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the date of the public statement or publication of information referenced therein; or

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

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

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

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

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

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in Phoenix, Arizona are authorized or required by law to remain closed.

"Capital Stock" means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the Closing Date, including common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership or any other equivalent of such ownership interest.

"Cash Collateral Account" means a designated blocked cash deposit account of Borrower maintained at the Lender encumbered by a first priority security interest in favor of Lender pursuant to the terms of this Agreement.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control " means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof), of the Capital Stock representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Borrower; or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were not (i) on the board of directors of the Borrower as of the Closing Date, (ii) nominated or approved by the board of directors of the Borrower as of the Closing Date nor (iii) appointed by directors nominated or approved in compliance with clause (b)(ii) of this definition.

"Closing Date" means the date of this Agreement.

"Collateral" means collectively all property described in Section 4.1, all property described in any Security Documents as security for any Obligations arising hereunder, and all other property that now or hereafter secures (or is intended to secure) any Obligations arising hereunder.

"Commitment Fee" has the meaning given to such term in Section 2.12.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communications" means this Agreement, any Loan Document and any document, amendment, waiver, forbearance, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

"Conforming Changes" means with respect to either the use or administration of the Term SOFR Rate or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if

the Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Contingent Obligation" means, with respect to any Person at the time of any determination, without duplication, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or otherwise: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any direct or indirect security therefor, (b) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness, (c) to maintain working capital, equity capital or other financial statement condition of the primary obligor so as to enable the primary obligor to pay such Indebtedness, satisfy any financial test or otherwise to protect the owner thereof against loss in respect thereof, or (d) entered into for the purpose of assuring in any manner the owner of such Indebtedness of the payment of such Indebtedness or to protect the owner against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit, in each case in the ordinary course of business.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for bilateral business loans; provided, that if the Lender decides that any such convention is not administratively feasible for the Lender, then the Lender may establish another convention in its reasonable discretion.

"Default" means any event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the Electronic Record.

"Environmental Laws" mean all Laws relating to the environment, preservation or reclamation of natural resources, the generation, use, handling, transportation, storage, treatment, disposal, management, release or threatened release of any Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, together with all regulations issued thereunder.

"Event of Default" has the meaning given to such term in Section 8.1.

"Floor" means a rate of interest equal to 0.00%.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Approvals" means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

"Governmental Authority" means the government of the United States of America or any political subdivision thereof, or any other nation or any political subdivision thereof, whether state, provincial or local, and

any agency, authority, security council, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantor" means, individually and/or collectively, any Person who may, at any time or from time to time, guaranty all or any part of the Obligations; provided as of the Closing Date, no Guarantors are required and there are no Guarantors.

"Guaranty" means, individually and collectively, the guaranty granted pursuant to Article 9 of this Agreement and each other guaranty or similar instrument executed by a Guarantor at any time, together with any amendments, modifications, supplements, or replacements thereto.

"Hazardous Substances" means any substance or material defined in or governed or regulated by any Environmental Laws as a dangerous, toxic or hazardous pollutant, contaminant, chemical, waste, material or substance, and also expressly includes urea-formaldehyde, polychlorinated biphenyls, dioxin, radon, lead-based paint, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, including but not limited to crude oil or any fraction thereof, natural gas, natural gas liquids, gasoline and synthetic gas, and any other waste, material, substance, pollutant or contaminant the presence of which on, in, about or under any property, would subject the owner or operator thereof to any damages, penalties, fines or liabilities under any applicable Environmental Laws.

"Impositions" has the meaning given to such term in Section 6.6.

"Indebtedness" means, with respect to any Person and without duplication, all obligations, contingent or otherwise, of such Person which in accordance with GAAP should be classified upon the balance sheet of such Person as liabilities, but in any event including the following whether or not so classified: (a) any obligations for borrowed money, (b) any obligation of such Person as lessee under any capitalized lease, (c) any obligation of such Person for the deferred purchase price of property or services (except for trade payables arising in the ordinary course of business), (d) any Contingent Obligations in respect of indebtedness of others, (e) any obligations in respect of letters of credit, (f) any obligations, whether or not assumed, secured by a Lien on any assets of such Person, and (g) Swap Obligations.

"Law" means, collectively, all international, foreign, federal, state, provincial, and local statutes, treaties, rules, guidelines, regulations, decrees, ordinances, codes, orders of any Governmental Authority and administrative or judicial orders, precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all administrative orders, court or arbitrator orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"LC Disbursement" means a payment made to a beneficiary pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

"LC Facility Amount" means $25,000,000.

"Letter of Credit" means any letter of credit issued pursuant to this Agreement.

"Lien" means with respect to any Person, any security interest, mortgage, pledge, lien (statutory or other), charge, encumbrance, easement, covenant, condition, title retention agreement or analogous instrument or device (including the interest of each lessor under any capitalized lease), in, of or on any assets or properties of such Person, now owned or hereafter acquired, whether arising by agreement or operation of Law.

"Loans" means, collectively, loans and advances made by Lender pursuant to this Agreement, including Revolving Loans.

"Loan Documents" means, collectively, this Agreement, the Notes, the Security Documents, each Guaranty, any Letter of Credit applications, and each other document, certificate or agreement, now or in the future, delivered by any Person in connection with any of the forgoing documents, as all of the same may be amended, supplemented, restated, replaced or otherwise modified from time to time.

"Loan Parties" means, collectively, the Borrower and any other Person party to this Agreement, or who becomes a party to this Agreement pursuant to a joinder agreement, and their respective successors and assigns, and the term "Loan Party" shall mean any one of them or all of them individually, as the context may require. As of the Closing Date, the Borrower is the only Loan Party.

"Loan Party Pro Rata Share" shall have the meaning given such term in Section 9.10.

"Loan Party Representative" shall have the meaning given such term in Section 2.16.

"Material Adverse Effect" means a material adverse effect on (a) any Loan Party's (i) business, property, assets, prospects, operations or condition, financial or otherwise or (ii) ability to perform any of its payment or other Obligations under this Agreement or any of the other Loan Documents, (b) the recoverable value of the Collateral or the Lender's rights or interests therein, (c) the legality, validity, binding effect or enforceability of any of the Loan Documents, or (d) the ability of the Lender to exercise any of its rights or remedies under the Loan Documents or as provided by law.

"Maturity Date" means October 18, 2025, or any earlier date on which the Revolving Facility Amount is reduced to zero or the Revolving Commitment is otherwise terminated pursuant to the terms hereof.

"Note" and "Notes" have the meaning given to such terms in Section 2.15(a).

"Obligations" means any and all of the liabilities, obligations and indebtedness of any Loan Party to the Lender or any of its parents, subsidiaries or other affiliates of any kind or nature, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to be due, and whether joint, several, or joint and several, including (a) obligations of the each Loan Party arising under this Agreement, the Security Documents and the other Loan Documents, (b) the obligation of any Loan Party to pay interest, fees, charges, expenses, reasonable attorneys' fees, overdrafts and other sums chargeable to such Loan Party by the Lender under any Loan Document, (c) all LC Exposure, (d) any and all obligations and liabilities of any or all of the Loan Parties in connection with credit cards for commercial customers, if any, (including "commercial credit cards," purchasing cards and procurement cards), stored value cards, credit card processing services, and treasury management services (including controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services) and (e) all Swap Obligations owing to a Lender or its affiliates. The term "Obligations" shall also include any and all amendments, extensions, renewals, refundings or refinancings of any of the foregoing.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control, and any successor thereto.

"Operating Account" has the meaning given to such term in Section 2.2(b).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Person" means any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, firm, association, trust, unincorporated organization, government, government entity or any other entity, whether acting as an individual, fiduciary or in any other capacity.

"Plan" has the meaning given to such term in Section 5.8(a).

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Relevant Government Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Revolving Applicable Margin" has the meaning given to such term in Section 2.5(a).

"Revolving Commitment" means Lender's commitment to make Revolving Loans and issue Letters of Credit hereunder up to the Revolving Facility Amount.

"Revolving Exposure" means, as of any date of determination, the sum of the outstanding principal balance of the Revolving Loans plus the LC Exposure.

"Revolving Facility Amount" means $25,000,000.

"Revolving Loans" means a Loan made pursuant to Section 2.1(a).

"Revolving Note" has the meaning given to such term in Section 2.15(a).

"Sanctioned Country" means, at any time, any country or territory which is itself the subject or target of any comprehensive Sanctions.

"Sanctioned Person" means, at any time, (a) any Person or group listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, or any other relevant Governmental Authority, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of the government of a Sanctioned Country, or (d) any Person owned or controlled, directly or indirectly, by any of the above.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State or any other Governmental Authority with jurisdiction over Lender, any Loan Party, or any of their respective subsidiaries and affiliates.

"Security Documents" means, collectively, this Agreement, all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) and each other document or agreement, now or in the future, delivered or filed by any Person to secure repayment of the Obligations arising hereunder (or perfect any such security), as all of the same may be amended, supplemented, restated, replaced or otherwise modified from time to time. As of the Closing Date, no Security Documents exist other than this Agreement.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"Subsidiary" of a Person means any corporation, partnership, limited liability company, association, joint venture, or similar business organization of which more than 50% of the outstanding Capital Stock having ordinary voting power at the time is owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries. Unless otherwise expressly provided, "Subsidiary" means a Subsidiary of the Borrower.

"Swap Agreement" means any agreement with respect to any swap (including a "swap" within the meaning of Section 1(a)(47) of the Commodity Exchange Act), forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Swap Obligations" of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

"Term SOFR Rate" means, for any one month period commencing on the first Business Day of each calendar month, the forward-looking rate per annum based on SOFR published by the Term SOFR Administrator two (2) U.S. Government Securities Business Days prior to such first Business Day of such month (such day, the "Periodic Term SOFR Determination Day"); provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Rate has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Rate will be the Term SOFR Rate as published by the Term SOFR Administrator on the first preceding
U.S. Government Securities Business Day for which such Term SOFR Rate was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3)
U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, provided that, if the Term SOFR Rate determined as provided shall ever be less than the Floor, then the Term SOFR Rate shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Rate selected by the Lender in its reasonable discretion).

"Threshold Amount" means $10,000,000.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of Illinois or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Section 1.2. Accounting Terms and Calculations; UCC Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower or Lender requests an amendment to eliminate the effect of such change in GAAP or in the application thereof, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such request shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding the foregoing, all financial

covenants contained herein shall be calculated (1) without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (ASC 825) (or any similar accounting principle) permitting or requiring a Person to value its financial liabilities or Indebtedness at the fair value thereof, (2) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470- 20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (3) all leases and obligations under any leases of any Person that are or would be characterized as operating leases and/or operating lease obligations in accordance with GAAP on December 14, 2018 (whether or not such operating leases and/or operating lease obligations were in effect on such date) shall continue to be accounted for as operating leases and/or operating lease obligations (and not as Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such obligations to be recharacterized as Capital Lease Obligations. Terms used in this Agreement that are not otherwise defined herein but are defined in the UCC have the meanings given to such terms in the UCC.

Section 1.3. Other Definitional Terms, Terms of Construction. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Sections, Exhibits, Schedules, and the like are references are to Sections, Exhibits, Schedules. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or". The singular of any word shall include the singular and the plural of such word. All incorporations by reference of covenants, terms, definitions or other provisions from other agreements are incorporated into this Agreement as if such provisions were fully set forth herein, and include all necessary definitions and related provisions from such other agreements. All covenants, terms, definitions and other provisions from other agreements incorporated into this Agreement by reference shall survive any termination of such other agreements until the Obligations arising hereunder are irrevocably paid in full and all commitments hereunder are terminated. The term "shall" shall have the same meaning as the term "will". Any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law shall, unless otherwise specified, refer to such Law as amended, modified or supplemented from time to time and any successor Law. References to any document, instrument or agreement, including the Loan Documents, (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's Laws): (x) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (y) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

Section 1.4. Interest Rates. The Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Lender and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Lender may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall

have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE 2 - TERMS OF LENDING

Section 2.1. Loans.

(a) Revolving Facility. Upon the terms and subject to the conditions hereof, the Lender agrees to make Revolving Loans to Borrower on a revolving basis during the Availability Period in an aggregate principal amount that will not result in the Availability being less than $0 after giving effect to any such Revolving Loan. The Borrower may borrow, prepay and reborrow Revolving Loans.

Section 2.2. Requests for Revolving Loans; Disbursements of Revolving Loans. To request a Revolving Loan, Borrower shall comply with the following:

(a) Borrower shall make each request for a Revolving Loan through either (i) the online banking for business platform, or (ii) in writing or (iii) by telephone (confirmed in writing), and in the case of clauses (ii) and (iii), in the form attached hereto as Exhibit A and signed by an Authorized Officer of the Borrower and delivered by hand or electronic communication. Each request shall be (1) delivered to Lender not later than 12:00 p.m., Phoenix Arizona time, on the Business Day of the proposed Revolving Loan, (2) irrevocable and (3) specify the Business Day on which such Revolving Loan is to be made and the aggregate amount of the requested Revolving Loans.

(b) Borrower irrevocably authorizes Lender to make all disbursements of Revolving Loans into a non-interest bearing account maintained by Borrower at Lender (the "Operating Account") that will be structured and utilized for that purpose in accordance with Lender's policies and procedures from time to time in effect. Unless other arrangements are made with Lender, all Revolving Loans will be credited to the Operating Account at the end of the applicable Business Day on which such Revolving Loan is requested.

Section 2.3. Letters of Credit.

(a) Generally. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for the account of any Loan Party, in a form acceptable to Lender, at any time and from time to time during the Availability Period.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by Lender) to Lender (prior to 12:00 p.m., Phoenix, Arizona time, at least two Business Days prior to the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.3(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed the LC Facility Amount and (ii) Availability will not be less than $0.

(c) Expiration Date. Subject to Section 2.3(h), each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) five days prior to the Maturity Date.

(d) Reimbursement. If the Lender makes any LC Disbursement, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement within one Business Day after the Borrower receives notice of such LC Disbursement.

(e) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.3(d) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

(f) Disbursement Procedures. LC Disbursements will be made by the Lender pursuant and subject to the terms of the Letter of Credit upon which a drawing has been made.

(g) Interim Interest. No interest shall accrue on LC Disbursements until the date on which reimbursement for such LC Disbursement shall become due. If the Borrower fails to reimburse any LC Disbursement when due pursuant to Section 2.3(d), then Section 2.9 shall apply to such unreimbursed amounts.

(h) Cash Collateralization. If (i)(a) notwithstanding Section 2.3(c), the term of any Letter of Credit shall continue beyond the Maturity Date or (b) any Event of Default occurs and is continuing and (ii) an amount less than 103% of the Revolving Exposure is in the Cash Collateral Account as of such date, on the Business Day that the Borrower receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit cash in the Cash Collateral Account, in an amount sufficient to increase the cash in the Cash Collateral Account to 103% of the Revolving Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in Section 8.1(d).

(i) Letter of Credit Fees. On the first Business Day of each month (commencing on the first such date occurring after the date hereof) to and including, and on, the Maturity Date, Borrower shall pay to Lender a letter of credit fee at the rate per annum equal to the Revolving Applicable Margin (computed on the basis of a year of 360 days and the actual number of days elapsed) on the daily average face amount of Letters of Credit outstanding during the preceding month. In addition to such letter of credit fee, Borrower further agrees to pay to Lender such issuing, processing, transaction and other fees and charges as Lender from time to time customarily imposes in connection with any issuance, amendment, cancellation, negotiation, and/or payment of Letters of Credit and drafts drawn thereunder.

Section 2.4. Termination of Revolving Commitment. Unless previously terminated, the Revolving Commitment shall terminate on the Maturity Date.

Section 2.5. Interest.

(a) Revolving Loans. Interest on the aggregate unpaid principal balance of the Revolving Loans shall accrue at an annual rate equal to 1.00% (the "Revolving Applicable Margin") plus the Term SOFR Rate.

(b) Other Obligations. At the discretion of Lender, Interest on delinquent Obligations arising hereunder, other than Loans, shall accrue interest at the rate applicable to Revolving Loans.

(c) Calculation of Interest. All interest on the Loans and other Obligations arising hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(e) Rate Determinations. Lender shall determine each interest rate applicable to the Revolving Loans hereunder, and its determination thereof shall be conclusive and binding except in the case of manifest error. In connection with the use or administration of the Term SOFR Rate, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Lender will promptly notify the Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of the Term SOFR Rate.

Section 2.6. Payments.

(a) Interest on the outstanding principal balance of the Revolving Loans is payable in arrears monthly beginning November 1, 2024, and on the first Business Day of each consecutive month thereafter.

(b) The entire unpaid principal balance of all Loans, all accrued interest thereon and all other Obligations arising hereunder shall be due and payable in full on the Maturity Date.

(c) All payments shall be applied first to accrued interest, then to late payment charges, fees, and expenses, then to the payment of the principal balance of the Loans and then to all other Obligations arising hereunder, if any; provided, however, that if an Event of Default exists, the Lender may elect to apply any payments in any order as it deems appropriate. All payments of principal, interest, fees, and all other Obligations payable under the Loan Documents shall be made to Lender without set-off or counterclaim in immediately available funds not later than 12:00 p.m., Phoenix, Arizona time, on the dates due at its offices at 1850 North Central Ave. Suite 1500, Phoenix, AZ 85004. Funds received on any day after such time shall be deemed to have been received on the next Business Day of the Lender. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of any interest or fees.

(d) Borrower hereby irrevocably authorizes (i) Lender to make a Revolving Loan for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Revolving Loans and that all such Revolving Loans shall be deemed to have been requested pursuant to Section 2.2, and (ii) Lender to charge any deposit account of Borrower maintained with Lender for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

Section 2.7. Use of Proceeds. The proceeds of the Revolving Loans shall be used for general corporate purposes, including to finance investments and other transactions with current and prospective strategic business partners of the Borrower. The proceeds of the Loans shall not be used to purchase or carry any "margin stock" (as defined in Regulation U). Without limiting the foregoing, no Loan Party shall request Loans or Letters of Credit, and no Loan Party shall use, or permit its respective Subsidiaries, directors, officers, employees or agents to use, any proceeds of Loans or Letters of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (b)(i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) in any manner that would result in the violation of any applicable Sanctions.

Section 2.8. Prepayments.

(a) Voluntary Prepayment. Borrower shall have the right at any time and from time to time to prepay any Loan in whole or in part without any prepayment premium or penalty. Prepayments shall be accompanied by accrued interest.

(b) Mandatory Prepayments. If at any time Availability is less than $0, Borrower shall immediately prepay the Revolving Loans and cash collateralize the LC Exposure in an aggregate amount equal to such deficiency.

(c) Application of Prepayments. All amounts paid pursuant to Section 2.8(a) shall be applied to the Obligations as elected by Borrower. All amounts paid pursuant to Section 2.8(b)) shall be applied to prepay the Revolving Loans without a corresponding reduction in the Revolving Facility Amount.

Section 2.9. Default Rate. During the continuance of an Event of Default, the Obligations arising hereunder shall, at the option of the Lender (or, in the case of an Event of Default under Section 8.1(a) (with respect to principal) or Section 8.1(d), automatically), bear interest at the rate otherwise applicable thereto plus 3% per annum and the Letter of Credit fee shall, at the option of the Lender (or, in the case of an Event of Default under Section 8.1(a) (with respect to principal) or Section 8.1(d), automatically) be increased by 3% per annum. Any such increased rate of interest, if imposed, shall continue until the Event of Default has been waived or cured to the Lender's satisfaction.

Section 2.10. Limitation on Interest Rate. If for any reason whatsoever the interest and other consideration payable to the Lender under the Loan Documents exceeds the limit prescribed by any applicable Law, then such interest and other consideration shall be reduced to the limit provided in such Law, so that in no event shall such interest and other consideration be in excess of such limit. If any payments of interest or other consideration have been made to the Lender in excess of such limits, such excess amount shall be applied to the principal balance or, if the Loans have been fully paid, refunded to the Borrower.

Section 2.11. [Reserved].

Section 2.12. Commitment Fee. Borrower shall pay to Lender a wholly-earned non-refundable commitment fee (the "Commitment Fee") during the Availability Period, which shall accrue at the rate equal to 0.35% on the average daily difference of the Revolving Facility Amount then in effect minus the Revolving Exposure. Accrued Commitment Fees shall be due and payable in arrears on the first Business Day of each calendar quarter commencing with the first payment occurring after the fiscal quarter ending September 30, 2024 and on the date on which the Revolving Commitment terminates. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

Section 2.13. Inability to Determine Rates; Increased Cost and Reduced Rate.

(a) If the Lender determines (which determination shall be conclusive, absent manifest error) that (i) adequate and fair means do not exist for ascertaining the Term SOFR Rate, (ii) the Term SOFR Rate does not accurately reflect the cost to the Lender of the Loan, or (iii) the making of Loans with interest accruing at the Term SOFR Rate is impracticable or unlawful as a result of a Change in Law, then the Term SOFR Rate shall be replaced with an alternative or successor rate or index chosen by the Lender in its reasonable discretion.

(b) If the Lender shall determine (which determination shall be conclusive, absent manifest error) that any Change in Law (whether or not having the force of law) shall (i)(A) impose, modify or deem applicable any assessment, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds or disbursements by, the Lender, (B) subject the Lender or the Loans to any tax, duty, charge, stamp tax or fee, or change the basis of taxation of payments to the Lender of principal or interest due from any Loan Party hereunder (other than a change in the taxation of the overall net income of the Lender) or (C) impose on the Lender any other condition regarding the Loans or the Lender's

funding thereof, and the result of any of the foregoing is to increase the cost to the Lender of maintaining the Loans, reduce its rate of return, or to reduce the amount of any sum received or receivable by Lender hereunder; or (ii) have the effect of reducing the rate of return on the Lender's capital to a level below that which Lender could have achieved but for such Change in Law (taking into consideration Lender's policies with respect to capital adequacy); then, in any case, the Loan Parties shall pay to the Lender, on demand, such additional amounts as the Lender shall from time to time determine are sufficient to compensate and indemnify the Lender for such increased costs, reduced return or reduced amounts. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender, as specified in this Section 2.13, shall be delivered to the Loan Parties and shall be conclusive absent manifest error. The Loan Parties shall pay the Lender the amount shown as due on any such certificate within 15 days after receipt thereof. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation.

Section 2.14. Taxes.

(a) Withholding Taxes. Except as otherwise required by Law, each payment by any Loan Party under this Agreement or the other Loan Documents shall be made without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient) imposed by or within the jurisdiction in which any Loan Party is domiciled, any jurisdiction from which any Loan Party makes any payment, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the applicable Loan Party shall make the withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon, and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by Lender free and clear of such taxes (including such taxes on such additional amount) is equal to the amount that Lender would have received had such withholding not been made. If Lender pays any amount in respect of any such taxes, penalties or interest, the Loan Parties shall reimburse Lender for that payment on demand in the currency in which such payment was made. If any Loan Party pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to Lender within 30 days after payment.

(b) Documentary Taxes. Each Loan Party agrees to pay on demand any documentary, stamp, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

Section 2.15. Evidence of Indebtedness.

(a) The Revolving Loans shall be evidenced by a promissory note in the form of Exhibit B attached hereto (as amended, restated, supplemented or otherwise modified from time to time, the "Revolving Note", each a "Note", and collectively, the "Notes").

(b) Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Loan Parties hereunder, including the amounts of principal and interest payable and paid to Lender from time to time hereunder. The entries maintained in such account(s) shall be prima facie evidence of the existence and amounts of the Obligations arising hereunder therein recorded; provided, that the failure of Lender to maintain such account(s) or any error therein shall not in any manner affect the obligation of Borrower to repay the Obligations arising hereunder in accordance with their terms.

Section 2.16. Loan Party Representative. Borrower hereby (i) is designated and appointed by each Loan Party as its representative, agent and attorney-in-fact on its behalf (the "Loan Party Representative") and (ii) accepts such appointment as the Loan Party Representative, in each case above, for the purposes of preparing and delivering financial reports and certificates including financial statements, compliance certificates, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Loan Party or the Loan Parties under the Loan Documents. Lender may regard any notice or other communication pursuant to any Loan Document from the Loan

Party Representative as a notice or communication from all Loan Parties. Except as expressly provided otherwise herein or in the other Loan Documents, each warranty, covenant, agreement and undertaking made on behalf of a Loan Party by the Loan Party Representative shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if the same had been made directly by such Loan Party.

Section 2.17. Effect of Benchmark Transition Event.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document and in addition to any rights in Section 2.13 above, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date Lender provides notice of such Benchmark Replacement to the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notice Standards for Decisions and Determinations. The Lender will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Lender will promptly notify the Borrower of the removal or reinstatement of the Benchmark pursuant to Section 2.17. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.17, including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17.

(d) Any Swap Agreement shall be deemed not to be a "Loan Document" for the purposes of this Section 2.17).

ARTICLE 3- CONDITIONS PRECEDENT

Section 3.1. Closing Date Conditions. The obligation of the Lender to make any Loans hereunder, and of Lender to issue any Letter of Credit, shall not become effective until the following conditions are satisfied in a manner satisfactory to the Lender:

(a) Loan Documents, Related Agreements and Information. The Lender shall have received each of the Loan Documents duly executed by the Loan Parties party thereto together with such other instruments and documents the Lender requests.

(b) Approvals. The Lender shall have received evidence regarding the Loan Parties organization or formation, power and authority, and authorization with respect to the execution, delivery and performance of this Agreement and the other Loan Documents.

(c) Fees and Expenses. The Lender shall have received payment of all fees, expenses and other amounts due and payable by the Borrower.

(d) Perfection. The Security Documents, any UCC-1 financing statements and any other Loan Document creating or evidencing a lien or security interest which the Lender requires to be filed of record, shall have been appropriately filed and the priority and perfection of the Lien created thereby shall have been established.

(e) Closing Statement. The Lender shall have received a closing statement or funds flow memorandum detailing the sources and uses of the proceeds of the Loans on the Closing Date.

(f) Insurance. The Lender shall have received evidence of insurance demonstrating that the general liability and property insurance required by Section 6.5 is in full force and effect.

(g) No Material Adverse Effect. Since December 31, 2023, no circumstance or event has occurred or arisen that could result in a Material Adverse Effect, as determined by Lender in its sole discretion.

(h) Due Diligence; Beneficial Ownership. The Lender and its counsel shall have completed all financial, business, legal, tax and regulatory due diligence, including all documentation required by bank regulatory authorities under applicable Anti-Corruption Laws and "know your customer" and Anti-Money Laundering Laws and Lender shall have received a fully-executed Beneficial Ownership Certification.

(i) Legal Opinion. Each of the Loan Parties shall have delivered a written opinion of such Loan Party's counsel, addressed to the Lender in form and substance satisfactory to the Lender and its counsel.

(j) Cash Collateral Account. Borrower shall have established and deposited $25,750,000 (i.e., 103% of the Revolving Facility Amount) into the Cash Collateral Account.

(k) Other. The Lender shall have received such other financial statements, opinions, endorsements, documents, instruments and certificates as the Lender requires.

Section 3.2. Conditions to Each Extension of Credit. The obligation of the Lender to make a Loan hereunder (including on the Closing Date), and of Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Representations and Warranties. All representations and warranties of each Loan Party made in this Agreement and in each other Loan Document are true and correct in all material respects (without duplication of any materiality qualifications therein).

(b) No Default or Material Adverse Effect. (i) No Default or Event of Default exists or would result therefrom and (ii) no event shall have occurred and no condition shall exist which has or could be reasonably expected to have a Material Adverse Effect.

(c) Availability. After giving effect to any Revolving Loan or the issuance, amendment, renewal or extension of any Letter of Credit, Availability is not less than $0.

Each request for a Loan or the issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section.

ARTICLE 4 - SECURITY AGREEMENT

Section 4.1. Grant of Security Interest. As security for the full, prompt and complete payment and performance by each Loan Party of the Obligations, each Loan Party hereby grants to, and creates in favor of, Lender (for the benefit of itself and as representative for the benefit of its subsidiaries, parents and other affiliates) a continuing security interest in, and Lien on, all of such Loan Party's right, title and interest in and to all of the following:

(a) All Deposit Accounts maintained with Lender, including the Cash Collateral Account and the Operating Account, and all Money, cash, and cash equivalents within such accounts;

(b) all additions, extensions, renewals, reinvestments, and substitutions to the foregoing;

(c) all income, distributions, and sums distributable or payable from, upon, or in respect of the foregoing;

(d) all rights and privileges incident to the foregoing, and

(e) all of the products and Proceeds of all of the foregoing, including cash Proceeds and non- cash Proceeds, whether in the form of original collateral or any of the property or rights or interests in property described above in this Section.

The deposits held in the above described Cash Collateral Account shall be held by the Lender as collateral for the payment and performance of the Obligations, and the Lender shall have exclusive dominion and control, including, the exclusive right of withdrawal, over the Cash Collateral Account; *provided* that so long as no Event of Default is then continuing, the Borrower may direct Lender to disburse (and Lender will so disburse) to Borrower amounts in excess of $25,750,000 from the Cash Collateral Account (including, for the avoidance of doubt, any such amounts constituting accrued interest on deposits in the Cash Collateral Account). So long as any Obligations arising under this Agreement remain outstanding, Borrower shall not terminate the accounts without Lender's prior written consent. Borrower hereby agrees that no funds or other amounts in the Cash Collateral Account may be withdrawn by Borrower, notwithstanding any provisions to the contrary contained in any other agreement between Borrower and Lender, as the depositary bank.

Section 4.2. Perfection of Lender's Security Interest; Duty of Care.

(a) Until the termination of this Agreement, each Loan Party shall perform any and all steps and take all actions requested by Lender from time to time to perfect, maintain, protect, and enforce Lender's security interest in, and Lien on, the Collateral.

(b) Each Loan Party hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as being of an equal or lesser scope or with greater detail, and (ii) provide any other information required by Part 5 of Article 9 of the UCC or any other applicable Law for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Loan Party is an organization, the type of organization and any organizational identification number issued to such Loan Party. Each Loan Party hereby irrevocably authorizes Lender at any time and from time to time to correct or complete, or to cause to be corrected or completed, any financing statements, continuation statements or other such documents as have been filed naming such Loan Party as debtor and Lender as secured party.

(c) To protect, perfect, or enforce, from time to time, Lender's rights or interests in the Collateral, Lender may, in its discretion (but without any obligation to do so), discharge any Liens at any time levied or placed on the Collateral.

(d) Lender shall have no duty of care with respect to the Collateral except that Lender shall exercise reasonable care with respect to the Collateral in Lender's custody. Each Loan Party agrees that Lender has no obligation to take steps to preserve rights against any prior parties.

Section 4.3. Power of Attorney.

(a) Each Loan Party does hereby make, constitute and appoint Lender (or any officer or agent of Lender) as such Loan Party's true and lawful attorney-in-fact, with full power of substitution, in the name of such Loan Party or in the name of Lender or otherwise, for the use and benefit of Lender, but at the cost and expense of such Loan Party solely during the occurrence and continuation of an Event of Default, (i) to indorse the name of such Loan Party on any instruments, notes, checks, drafts, money orders, or other media of payment or Collateral that may come into the possession of Lender or any affiliate of Lender in full or part payment of any of the Obligations; and (ii) to do any and all things necessary or desirable to perfect Lender's security interest in, and Lien on, and other rights and interests in, the Collateral, to preserve and protect the Collateral and to otherwise carry out this Agreement.

(b) This power of attorney, being coupled with an interest, will be irrevocable for the term of this Agreement and all transactions under this Agreement and thereafter so long as any of the Obligations arising hereunder remain in existence. Each Loan Party ratifies and approves all acts of such attorney, and neither Lender nor its attorney will be liable for any acts or omissions or for any error of judgment or mistake of fact or law, except where such act, omission, error of judgment or mistake of fact or law amounts to gross negligence or willful misconduct. Each Loan Party will execute and deliver promptly to Lender all instruments necessary or desirable, as determined in Lender's discretion, to further Lender's exercise of the rights and powers granted it in this Section 4.3.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

To induce the Lender to make the requested Loans and Letters of Credit hereunder, the Loan Parties, jointly and severally, represent and warrant to the Lender that the following are true, correct and complete:

Section 5.1. Organization, Standing, Qualification, Authorization and Validity. Each Loan Party (a) is duly and properly incorporated, organized or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation, formation or organization and, except where failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, has all requisite authority to conduct its business in each jurisdiction in which its business is conducted and (b) has all requisite power and authority to (i) own its properties and to carry on its business as now conducted except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) to enter into this Agreement and the other Loan Documents to which such Loan Party is a party and to perform its obligations hereunder and thereunder. Each Loan Documents to which any Loan Party is a party (x) has been duly authorized by all necessary company action of such Loan Party, (y) has been duly executed and delivered by such Loan Party and (z) constitutes the legal, valid and binding obligations of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 5.2. Ownership and Liens. The Loan Parties own good title, free of Liens (other than Liens permitted under this Agreement), to the Collateral.

Section 5.3. Approvals; Compliance with Laws. (a) No authorization, consent, license or exemption from, or filing or registration with, any court or Governmental Authority, nor any approval or consent of any other Person, is or will be required in connection with the valid execution, delivery or performance of the Loan Documents or the legality, validity, binding effect or enforceability of any of the Loan Documents except such as have been obtained or made and are in full force and effect and (b) each Loan Party is in compliance in all material respects with all applicable Laws.

Section 5.4. No Violation of Other Agreements or Laws. The execution, delivery and performance of the Loan Documents will not (a) violate in any agreement to which any Loan Party is subject, or by which it or any of its assets are bound, (b) result in the creation or imposition of any Lien on any assets of any Loan Party other than the Liens in favor of the Lender, (c) violate any provision of any Loan Party's organizational documents, or (d) violate in any material respect any Law, judgment, injunction, decree or award binding on any Loan Party.

Section 5.5. Taxes. The Loan Parties have filed all federal, state and other income and other tax returns required to be filed and have paid all taxes due, except those presently being contested in good faith and as to which adequate reserves have been provided, except in each case where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.6. Financial Statements and No Material Adverse Change. The Borrower's annual consolidated and consolidating financial statements most recently delivered to Lender, and the interim financial statements for the fiscal periods thereafter, have been prepared in accordance with GAAP and fairly present, in all material respects, the financial condition and results of operations and cash flows of the Loan Parties at such date. Since the date such annual financial statements were last provided, no Material Adverse Effect has occurred with respect to the Borrower, any Guarantor or the Collateral. The Loan Parties have no material Contingent Obligations not disclosed in such financial statements except as otherwise permitted under this Agreement. The information listed in the Beneficial Ownership Certification, as updated in accordance with Section 6.11, is true and correct in all respects.

Section 5.7. Subsidiaries; Outstanding Capital Stock. Except as set forth in Schedule 5.7, as of the Closing Date, the Borrower does not have any Subsidiaries. Except in each case where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all issued and outstanding Capital Stock of each of the Loan Parties is duly authorized and validly issued, fully paid, non- assessable, and free and clear of all Liens other than Liens permitted under this Agreement.

Section 5.8. Employee Benefit Plans.

(a) the Loan Parties (i) are in compliance in all material respects with all applicable provisions of ERISA, (ii) have not violated in any material respect any provision of any defined employee pension benefit plan (as defined in ERISA) maintained or contributed to by any such Loan Party (each, a "Plan"). No Reportable Event (as defined in ERISA) has occurred and is continuing with respect to any Plan initiated by any Loan Party. Each Loan Party has met its minimum funding requirements under ERISA in all material respects with respect to each Plan. Each Plan will be able to fulfill its benefit obligations in all material respects as they come due in accordance with the Plan documents and under GAAP.

(b) No Loan Party is an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Internal Revenue Code) which is subject to Section 4975 of the Internal Revenue Code, and neither the execution of this Agreement nor the making of any Loan hereunder, or issuance, amendment, renewal or extension of any Letter of Credit hereunder, gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code. No Loan Party is subject in any material respect to any Law which is substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

Section 5.9. Margin Stock; Use of Proceeds. Margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System or any successor thereto) constitutes less than 25% of the assets of the Loan Parties which are subject to any limitation on sale, pledge or other restriction hereunder. The proceeds of Loans and Letters of Credit are being used for business purposes, and not for purchasing or carrying margin stock, nor any agricultural or consumer purpose.

Section 5.10. Environmental, Health and Safety Laws. There does not exist any violation by the Loan Parties of any applicable Environmental Laws, except violations that would not reasonably be expected to result in a Material Adverse Effect. The Loan Parties have not received any notice to the effect that any part of its operations or property is in violation of any applicable Environmental Law or that any part of its property is the subject of any governmental investigation evaluating whether any remedial action is needed to respond to any release of any Hazardous Substance into the environment, except such violations or remedial actions that would not reasonably be expected to result in a Material Adverse Effect.

Section 5.11. Solvency. The Loan Parties are solvent, able to pay their debts as they become due, and have sufficient capital to carry on their business and all businesses in which they are about to engage.

Section 5.12. [Intentionally Omitted].

Section 5.13. Sanctions; Anti-Money Laundering Laws and Anti-Corruption Laws. (a) None of the Loan Parties, any director, officer or employee of any Loan Party, nor, to the knowledge of Loan Parties, any agent or representative of any Loan Party, is a Sanctioned Person or currently the subject or target of any Sanctions; (b) the Loan Parties, each of the Loan Parties' respective directors, officers and employees, and, to the knowledge of the Loan Parties, each of the Loan Parties' respective agents and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions; and (c) the Loan Parties will maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and the Loan Parties' and their Subsidiaries' respective directors, officers, employees and agents with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

Section 5.14. Jurisdiction of Organization; Chief Executive Office; Etc. Schedule 5.14 lists each Loan Party's exact legal name, jurisdiction of organization, federal tax identification number, organizational identification number, if any, the location of such Loan Party's chief executive office or sole place of business, each jurisdiction in which such Loan Party is foreign qualified, and, for the five years preceding the Closing Date, all jurisdictions of organization and legal names of such Loan Party.

Section 5.15. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Loan Parties, threatened against or affecting the Loan Parties or the Collateral which, if determined adversely to the Loan Parties or Collateral, could reasonably be expected to result in a Material Adverse Effect.

Section 5.16. No Defaults under Material Agreements. Except as set forth in the Borrower's publicly filed forms 10-Q and 10-K, no Loan Party is in default under any material agreement to which it is subject, or by which it or any of its assets are bound in any material respect.

ARTICLE 6- AFFIRMATIVE COVENANTS

Until the Revolving Commitment is terminated and all Obligations arising hereunder, other than contingent indemnification Obligations for which no claim giving rise thereto has been asserted, have been paid in full, each Loan Party covenants and agrees as follows:

Section 6.1. Financial Statements and Reports. Each Loan Party shall furnish, or caused to be furnished, to the Lender:

(a) Within 120 days after the end of each fiscal year of the Borrower, the annual audit report of the Borrower prepared on a consolidated and consolidating basis in accordance with GAAP consistently applied, consisting of at least statements of income, cash flow and stockholders' equity, and a consolidated and consolidating balance sheet as at the end of such year, setting forth in each case in comparative form corresponding figures from the previous annual audit, certified (without a "going concern" or like qualification or exception (other than a qualification related to the maturity of the Revolving Commitments and the Loans on the Maturity Date or upcoming maturity date under any other Indebtedness occurring within one year from the time such report is delivered or potential inability to satisfy a financial covenant under any Indebtedness) and without any qualification or exception

as to the scope of such audit) by independent certified public accountants reasonably acceptable to the Lender, together with any management letters or reports delivered to the Borrower by such accountants.

(b) Within 45 days after the end of each fiscal quarter of the Borrower, company-prepared financial statements of the Borrower, prepared on a consolidated and consolidating basis in accordance with GAAP, consisting of at least statements of income, cash flow and stockholders' equity, and a consolidated and consolidating balance sheet as at the end of such quarter, which such financial statements (i) set forth in each case (A) figures for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter and (B) in comparative form figures for the corresponding dates and periods in the prior fiscal year, and (ii) are accompanied by a certification of the Borrower stating that such financial statements present fairly the financial condition of the Borrower and were prepared in accordance with GAAP consistently applied (subject to year-end adjustments).

(c) Within five days after knowledge thereof shall have come to the attention of any officer of a Loan Party, written notice to the Lender of: (i) the occurrence of any Default or Event of Default; (ii) any threatened or pending action, suit, litigation or proceeding before any court or arbitrator or any Governmental Authority affecting such Loan Party or any property of such Loan Party, which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and (iii) the occurrence of any other development that could reasonably be expected to result in a Material Adverse Effect.

(d) From time to time, such other information regarding the business, operation and financial condition of each Loan Party and the Collateral as the Lender may reasonably request, including annual verification of insurance coverage.

Notwithstanding the foregoing, the obligations in Section 6.1(a) and Section 6.1(b) may be satisfied by furnishing Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs; provided that, upon reasonable request by the Lender, to the extent such statements are in lieu of statements required to be provided under Section 6.1(a), such statements shall be accompanied by a certification of an independent certified public accountants reasonably acceptable to the Lender, which report and opinion shall satisfy the applicable requirements set forth in Section 6.1(a).

Section 6.2. Books and Records. The Loan Parties shall keep adequate and proper records and books of account in which full and correct entries shall be made of its dealings, business and affairs.

Section 6.3. Inspection. Upon reasonable notice, the Loan Parties shall permit any Person designated by the Lender (a) to inspect, examine and copy the books and financial records of the Loan Parties, and (b) to discuss any of the foregoing with the officers and outside accountants of the Loan Parties, all at such reasonable times and intervals as the Lender may designate (but no more than once annually if no Event of Default exists), and all of which shall be at the expense of the Loan Parties.

Section 6.4. Existence. Each Loan Party shall maintain its existence in good standing under the laws of the jurisdiction of its formation and its qualification to transact business in each jurisdiction where failure to so qualify could reasonably be expected to result in a Material Adverse Effect.

Section 6.5. Insurance. Each Loan Party shall maintain, or cause to be maintained, with financially sound and reputable insurers, casualty insurance on all of their property and liability insurance in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions satisfactory to Lender in its commercially reasonable discretion. Copies of each such policy of insurance requested by the Lender shall be provided to the Lender. Each Loan Party agrees to provide the Lender with prompt notice of any material modification, notice of cancellation or cancellation of any insurance policies required hereunder.

Section 6.6. Payment of Taxes and Claims. Each Loan Party shall file all tax returns and reports which are required by law to be filed by it and shall pay before they become delinquent, all taxes, assessments and governmental charges and levies imposed upon it or its property and all claims or demands of any kind (including those of suppliers, mechanics, carriers, warehousemen, landlords and other like Persons) which, if unpaid, might

result in the creation of a Lien upon its property (collectively, "Impositions") that, if not paid, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, except those being contested in good faith by appropriate proceedings and with respect to which adequate reserves with respect thereto have been set aside on such Loan Party's books in accordance with GAAP**.**

Section 6.7. Maintenance and Repair. Each Loan Party shall, and shall cause its Subsidiaries to, maintain and preserve all its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted, and shall make all necessary repairs thereto and renewals and replacements thereof, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 6.8. Environmental Matters; Reporting. Each Loan Party shall observe and comply, and shall cause each other Person occupying any portion of such Loan Party's properties to observe and comply with all Environmental Laws except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 6.9. Material Agreements. Each Loan Party shall (a) upon request of the Lender, furnish to the Lender copies of each material agreement to which it is a party, whether now existing or hereafter entered into, (b) perform and observe all of the payment terms and other material terms and provisions of each such material agreement to be performed or observed by it, and (c) maintain each such material agreement in full force and effect and enforce each such material agreement in accordance with its terms, except, in the cases of clauses (b) and (c) hereof, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 6.10. Treasury Management; Cash Collateral Account. The Borrower shall maintain the Lender as its principal depository bank for the maintenance of operating, administrative, cash management, and collection activity, necessary for the conduct of its business; provided that, notwithstanding the foregoing, the Loan Parties shall be permitted to maintain their credit card processing programs, gift card (or other stored value) programs, backup operating accounts, money market accounts and other programs or accounts serving a similar function as any of the foregoing programs and accounts with depository institutions other than the Lender. At no time shall the cash within the Cash Collateral Account be less than $25,750,000 (which is 103% of the Revolving Facility Amount).

Section 6.11. Compliance with Laws. Each Loan Party shall comply, and cause each of its Subsidiaries to comply, with the requirements of all applicable Laws in all material respects. Without limiting the foregoing, each Loan Party shall (a) comply, and cause each other Loan Party and each of its Subsidiaries to comply, with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) provide, and cause each other Loan Party and each of its Subsidiaries to provide, such information and take such actions as are necessary for Lender to comply with all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions, (c) promptly notify Lender of any change in the information provided by the Borrower in any Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein, and if required by Lender, provide an updated Beneficial Ownership Certification reflecting such change and (d) maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws, Anti-Money- Laundering Laws and Sanctions.

Section 6.12. Claims Against Collateral. Each Loan Party shall defend or cause to be defended the Collateral against all of the claims and demands of all Persons whomsoever.

ARTICLE 7 - NEGATIVE COVENANTS

Until the Revolving Commitment is terminated and all Obligations arising hereunder, other than contingent indemnification Obligations for which no claim giving rise thereto has been asserted, have been paid in full, each Loan Party covenants and agrees as follows:

Section 7.1. Merger and Name; Changes in Accounting, Name or Jurisdiction. No Loan Party shall (a)(i) merge or consolidate, or enter into any analogous reorganization or transaction with any Person whereby such Loan Party is not the surviving entity, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or (iii) divide itself into two or more Persons; (b) make any significant change in accounting treatment or reporting practices, except as required by GAAP; (c) change the fiscal year or method for determining fiscal quarters of the Borrower; (d) change its legal name as it appears in official filings in its jurisdiction of organization or otherwise amend its organizational documents in a manner adverse to Lender; or (e) change its (i) jurisdiction of organization, (ii) chief executive office or (iii) principal place of business, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:

(a) any Subsidiary may merge with (i) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person; and

(b) any Loan Party may dispose of its assets to Borrower.

Section 7.2. Intentionally Omitted.

Section 7.3. Liens. No Loan Party shall create, incur, assume or suffer to exist any Lien on the Collateral except (i) Liens in favor of the Lender and (ii) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet delinquent or are being contested in compliance with the provisions of Section 6.6 in an amount not exceeding $20,000 individually.

Section 7.4. Employee Benefit Plans. No Loan Party shall take any action, or omit to take any action, if such action or omission would result in any of the statements set forth in Section 5.8 (including any written disclosures made by such Loan Party to the Lender under Section 5.8) becoming inaccurate or misleading at any time.

ARTICLE 8- EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) (i) Any Loan Party shall fail to make when due, whether by acceleration or otherwise, any payment of principal of any Loan or any reimbursement obligation in respect of any LC Disbursement or (ii) any Loan Party shall fail to make when due, whether by acceleration or otherwise, any payment of interest on any Loan or any fee or any other amount (other than any principal on the Loans) and, in the case of this clause (ii), such failure shall continue unremedied for a period of three Business Days.

(b) Any representation or warranty made, or deemed made, by or on behalf of any Loan Party or other Guarantor is false or misleading in any material respect on the date made or deemed made.

(c) A default occurs in the performance of any Loan Party's obligations (i) Article 7 hereof or
(ii) in Section 6.1, 6.4, 6.10, and 6.12, or (iii) in Sections 6.2 through 6.3, 6.5 through 6.9 and 6.11 hereof, and, in the case of this clause (iii), such default shall continue unremedied for a period of thirty Business Days.

(d) (i) There is filed by any Loan Party or other Guarantor any case, petition, proceeding or other action ("Bankruptcy Case") under any existing or future bankruptcy, insolvency, reorganization, liquidation or arrangement or readjustment of debt law or any similar existing or future law of any applicable jurisdiction, including the bankruptcy code ("Insolvency Law"), (ii) an involuntary Bankruptcy Case ("Involuntary Proceeding") is commenced against any Loan Party or other Guarantor under any Insolvency Law and the Involuntary Proceeding is not controverted within 10 days, or is not dismissed within 30 days, after the commencement of the Bankruptcy Case, or (iii) a custodian, receiver, trustee, sequestrator, or agent is appointed or authorized to take charge of any of any Loan Party's or other Guarantor's properties.

(e) A judgment or judgments for the payment of money in excess of the Threshold Amount, individually or in the aggregate, shall be rendered against any Loan Party or other Guarantor and either (i) the judgment creditor executes on such judgment or (ii) such judgment remains unpaid or undischarged for more than 30 days from the date of entry thereof or such longer period during which execution of such judgment shall be stayed during an appeal from such judgment.

(f) Any default shall occur with respect to any Indebtedness to any Person other than the Lender in an aggregate principal amount in excess of the Threshold Amount and such failure shall have continued after the applicable notice or cure period therein, if any.

(g) Any execution or attachment shall be issued whereby any substantial part of the property of any Loan Party or any other Guarantor shall be taken or attempted to be taken and the same shall not have been vacated or stayed within 30 days after the issuance thereof.

(h) (i) Any Guarantor (if an individual) shall die or cease to maintain legal capacity or (ii) except as permitted in Section 9.6 hereof, any Guarantor shall be dissolved or liquidated or shall revoke or disavow, or attempt to revoke or disavow, the Guaranty to which it is a party.

(i) The institution by any Loan Party of steps to terminate any Plan, if in order to effectuate such termination any Loan Party would be required to make a contribution to such Plan, or would incur a liability or obligation to such Plan, in excess of the Threshold Amount, or the institution by the Pension Benefit Guaranty Corp. of steps to terminate any Plan.

(j) (i) Any Loan Document ceases to be in full force and effect, (ii) any of the Security Documents shall for any reason fail to create a valid and perfected first priority Lien in favor of the Lender in any Collateral or (iii) any action is taken to discontinue or to assert the invalidity or unenforceability of any Loan Document.

(k) A Change of Control shall occur or any event occurs or condition exists that has a Material Adverse Effect.

(l) The breach of any of the other terms of this Agreement or any other Loan Document which is not remedied within 30 days after the earlier of (i) any Loan Party becoming aware of such breach and (ii) the Lender providing written notice thereof to the Loan Parties.

Any Event of Default occurring hereunder shall be deemed to exist and be continuing until waived by Lender, notwithstanding any actual or purported remedy or cure of the actions, facts, circumstances or conditions giving rise to such Event of Default.

Section 8.2. Remedies. Upon the occurrence and during the continuance of any Event of Default, Lender may (a) declare all or any portion of the Revolving Commitment to be terminated, whereupon the Revolving Commitment shall forthwith be suspended or terminated; (b) declare all or any portion of the Obligations to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Loan Party; (c) take possession of the Collateral; (d) [intentionally omitted]; (e)
(i) exchange, enforce, waive or release any of the Collateral or portion thereof, (ii) apply the proceeds of the Collateral against the Obligations and direct the order or manner of the liquidation thereof (including any sale or other disposition), as Lender may, from time to time, in each instance determine, and (iii) settle, compromise, collect or otherwise liquidate any such security in any manner without affecting or impairing its right to take any other further action with respect to any security or any part thereof; (f) sell, lease or otherwise deal with part or all of the Collateral at public or private sale(s), for cash, upon credit or otherwise, at such prices and upon such terms as Lender deems advisable, at Lender's discretion, and Lender may, if Lender deems it reasonable, postpone or adjourn any sale of the Collateral from time to time by an announcement at the time and place of sale or by announcement at the time and place of such postponed or adjourned sale, without being required to give a new notice of sale, and without being obligated to make any sale of the Collateral regardless of notice of sale having been given, and Lender

may purchase any Collateral at such public or private sale(s) and, in lieu of actual payment of the purchase price, may set off the amount of such price against the Obligations; (g) [intentionally omitted]; (h) sign any indorsements, assignments or other writings of conveyance or transfer in connection with any disposition of the Collateral; (i) apply for and have a receiver appointed under state or federal law by a court of competent jurisdiction in any action taken by Lender to enforce its rights and remedies under this Agreement and, as applicable, the other Loan Documents, in order to manage, protect, preserve, and sell and otherwise dispose of all or any portion of the Collateral; and (j) exercise all other rights and remedies of the Lender under any of the Loan Documents and applicable Laws;

provided, however, that upon the occurrence of any event specified in Section 8.1(d), the obligation of Lender to make Revolving Loans or to issue, amend, renew or extend any Letter of Credit shall automatically terminate and the unpaid amount of all outstanding Obligations shall automatically become due and payable without further act of Lender.

Section 8.3. Security Agreement in Accounts and Setoff. As additional security for the payment of all of the Obligations, each Loan Party grants to the Lender a security interest in, a lien on, and an express contractual right to set off against, each account and all account balances, cash and any other property of such Loan Party now or hereafter maintained with, or in the possession of, the Lender. During the continuance of any Event of Default, the Lender may: (a) refuse to allow withdrawals from any such account; (b) apply the amount of such account balances and the other assets of such Loan Party described above to the Obligations; and (c) offset any other obligation of the Lender against the Obligations; in each case, whether or not the Obligations are then due or have been accelerated and all without any advance or contemporaneous notice or demand of any kind to such Loan Party, such notice and demand being expressly waived.

Section 8.4. Waivers by Loan Parties. Each Loan Party acknowledges that portions of the Collateral could be difficult to preserve and dispose of and be further subject to complex maintenance and management. Accordingly, the Lender, in exercising its rights under this Article 8, shall have the widest possible latitude to preserve and protect the Collateral and the Lender's security interest in and Lien thereon. Moreover, each Loan Party acknowledges and agrees that Lender shall have no obligation to (a) clean up or otherwise prepare any of the Collateral for sale, (b) pursue any Person to collect any of the Obligations, or (c) exercise collection remedies against any Persons obligated on the Collateral.

Section 8.5. Notice of Dispositions. Each Loan Party hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Loan Parties, addressed as set forth in Section 10.4, at least ten days prior to (a) the date of any such public sale or (b) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Loan Party waives all claims, damages, and demands against the Lender arising out of the repossession, retention or sale of the Collateral, except such as arise solely out of the gross negligence or willful misconduct of the Lender as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Loan Party absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Lender, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Agreement, or otherwise. Except as otherwise specifically provided herein, each Loan Party hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral. The proceeds of the sale will be applied first to all costs and expenses of such sale including attorneys' fees and other costs and expenses, and second to the payment of all Obligations in the manner and order determined by the Lender in its discretion. The Loan Parties shall remain liable to the Lender for any deficiency. Unless otherwise directed by law, the Lender will return any excess to the Loan Parties.

Section 8.6. Equitable Relief. Each Loan Party recognizes that, in the event such Loan Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to Lender; therefore, each Loan Party agrees that Lender, if Lender so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 8.7. Payments Set Aside; Reinstatement. The Loan Documents shall remain in full force and effect and continue to be effective (including the Liens created hereunder) should any petition be filed by or against any Loan Party for liquidation or reorganization, should any Loan Party become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Loan Party's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof (including a payment effected through exercise of a right of setoff), is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise (including pursuant to any settlement entered into by the Lender in its discretion), all as though such payment or performance had not been made. In the event that any payment, or any part thereof (including a payment effected through exercise of a right of setoff) required to be made with respect to the Obligations arising hereunder, is rescinded, reduced, restored or returned, the Obligations arising hereunder shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

ARTICLE 9 - CONTINUING GUARANTY

Section 9.1. Guaranty.

(a) Each Loan Party hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by Lender in connection with the collection or enforcement thereof). Lender's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Loan Party, and conclusive for the purpose of establishing the amount of the Obligations. This guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of any Loan Party under this Guaranty, and each Loan Party hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

(b) Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party or other Guarantor to honor all of its obligations under this Guaranty or any other Guaranty in respect of Swap Obligations. The obligations of each Qualified ECP Guarantor under this Section 9.1(b) shall remain in full force and effect until payment in full of the Obligations arising hereunder. Each Qualified ECP Guarantor intends that this Section 9.1(b) constitute, and this Section 9.1(b) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 9.2. Rights of the Lender; No Discharge or Impairment. No Obligation of any Loan Party shall be affected, discharged or impaired by any of the following: (a) bankruptcy, disability, dissolution, incompetence, death, insolvency, liquidation, or reorganization of any other Loan Party; (b) any defense of any other Loan Party to payment or performance of any or all of the Obligations or enforcement of any or all rights of the Lender in the Collateral; (c) discharge, modification of the terms of, reduction in the amount of, or stay of enforcement of any or all liens and encumbrances in the Collateral or any or all Obligations in any bankruptcy, insolvency, reorganization,

or other legal proceeding or by application of any Law with respect to any other Loan Party; (d) any claim or dispute by any other Loan Party concerning the occurrence of an Event of Default, performance of any Obligations, or any other matter; (e) any election by the Lender under 1111(b)(2) of the bankruptcy code; (f) the granting of any liens or borrowing of any money by any Loan Party as a debtor-in-possession or in any similar capacity under any bankruptcy, insolvency, reorganization, or other legal proceeding or by application of any applicable Law; (g) any waiver or modification of any provision of the Loan Documents that affects any other Loan Party, whether or not such waiver or modification affects all Loan Parties; (h) the cessation of liability, release or discharge of any other Loan Party or other obligor for any reason; (i) the perfection or failure to perfect, release or discharge of any Collateral or other security; (j) the exercise or failure to exercise any rights or remedies pursuant to the Loan Documents by the Lender or any election of remedies by the Lender; (k) any invalidity, irregularity or unenforceability in whole or in part of any of the Loan Documents or any limitation of the liability of any Loan Party under the Loan Documents, including any claim that the Loan Documents were not duly authorized, executed, or delivered on behalf of any Loan Party; (l) any other acts or omissions by the Lender that result in or could result in the release or discharge of any other Loan Party; or (m) the occurrence of any other event or the existence of any other condition that by operation of law or otherwise could result in the release or discharge of a surety, guarantor, or other persons secondarily liable on an obligation.

Section 9.3. Waivers. Each Loan Party unconditionally waives: (a) any requirement that the Lender marshal assets, first make demand upon, or seek to enforce or exhaust remedies against any (i) other Loan Party; (ii) of the Collateral or other property of any Loan Party; or (iii) other Person, before demanding payment from or seeking to enforce the Obligations against such Loan Party; (b) any and all rights, benefits and defenses which might otherwise be available under the provisions of Laws that might operate to limit any Loan Party's liability under, or the enforcement of, the Obligations; (c) diligence, presentment, protest, demand for performance, notice of acceptance, notice of nonperformance, notice of intent to accelerate, notice of acceleration, notice of protest, notice of dishonor, notice of extension, renewal, alteration or amendment, notice of acceptance of the Loan Documents, notice of default under any of the Loan Documents (except as provided in the Loan Documents), and all other notices whatsoever, except for notices specifically required pursuant to other provisions of the Loan Documents; (d) any obligation of the Lender to provide any Loan Party any information concerning any other Loan Party or any Collateral; and (e) any other claim or defense that otherwise would be available based on principles of suretyship or guarantee or otherwise governing secondary obligations.

Section 9.4. Obligations Independent. The obligations of each Loan Party hereunder are joint and several and those of a primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other Loan Party or Guarantor, and a separate action may be brought against each Loan Party or Guarantor to enforce this Guaranty whether or not the Borrower or any other Person is joined as a party.

Section 9.5. Subrogation. No Loan Party shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all Obligations and any other amounts payable under this Agreement are indefeasibly paid in full in cash and the Revolving Commitment is terminated. If any amounts are paid to any Loan Party in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of Lender and shall forthwith be paid to Lender to reduce the amount of the Obligations, whether matured or unmatured.

Section 9.6. Termination; Reinstatement. This Guaranty is a continuing guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations arising hereunder and any other amounts payable under the Loan Documents are indefeasibly paid in full in cash and the Revolving Commitment is terminated. If a Loan Party elects to revoke this Guaranty, such revocation shall not become effective until five Business Days after Lender receives written notice from such Loan Party revoking this Guaranty. If this Guaranty is revoked by any Loan Party, said revocation shall have no effect on the continuing liability of such Loan Party to guarantee unconditionally the prompt payment of all Obligations which are contracted or incurred prior to the fifth day after receipt of the revocation notice, including any such prior Obligations which are subsequently renewed, modified or extended after such revocation becomes effective, as well as all extensions of credit made after revocation pursuant to any commitments made prior to such revocation. Revocation of this

Guaranty by any Loan Party shall not relieve any other Loan Party of any liability hereunder. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of any Loan Party or other Guarantor is made, or Lender exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Law or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not Lender is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The reinstatement provisions of this Section 9.6 shall survive termination of this Guaranty.

Section 9.7. Subordination of Intercompany Indebtedness. All Indebtedness, together with all rights of subrogation, contribution, reimbursement, and indemnity (including the indemnification and reimbursement rights provided pursuant to this Section (collectively, "Intercompany Indebtedness") from one or more Loan Parties to or between another Loan Party, now or in the future, is hereby subordinated to the Obligations of each Loan Party to the Lender until such time as the Obligations arising hereunder are indefeasibly paid in full in cash and the Revolving Commitment is terminated. Any Intercompany Indebtedness, if the Lender so requests, shall be collected, enforced and received by each Loan Party as trustee for the Lender and be paid over to the Lender on account of the Obligations, but without reducing or affecting in any manner the liability of each Loan Party under the other provisions of the Loan Documents.

Section 9.8. Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against any Guarantor or Borrower under any Laws, or otherwise, all such amounts shall nonetheless be payable by each Loan Party immediately upon demand by Lender.

Section 9.9. Condition of Borrower. Each Loan Party acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from Borrower and any other Guarantor such information concerning the financial condition, business and operations of Borrower and any such other Guarantor as such Loan Party requires, and that Lender has no duty, and no Loan Party is relying on Lender at any time, to disclose to any Guarantor any information relating to the business, operations or financial condition of Borrower or any other Guarantor.

Section 9.10. Limit on Recovery; Obligations among Loan Parties. NOTHING IN THIS SECTION SHALL LIMIT THE OBLIGATIONS OF ANY LOAN PARTY TO THE LENDER OR OTHERWISE LIMIT THE JOINT AND SEVERAL NATURE OF ALL OF THE OBLIGATIONS. EACH LOAN PARTY SHALL BE FULLY, JOINTLY AND SEVERALLY LIABLE TO THE LENDER PURSUANT TO THE LOAN DOCUMENTS WITHOUT REGARD TO ANY ALLOCATION OF LOSSES AND LIABILITIES PURSUANT TO THIS SECTION OR OTHERWISE AND, NOTWITHSTANDING ANY SUCH ALLOCATION, EACH LOAN PARTY HAS EXPRESSLY ASSUMED THE RISK THAT SUCH LOAN PARTY'S ACTUAL LIABILITY MAY EXCEED SUCH LOAN PARTY'S PRO RATA SHARE AND THAT OVERPAYMENTS
MAY NOT ACTUALLY BE REIMBURSED OR INDEMNIFIED. Subject to the foregoing, Loan Parties agree that the provisions of this Section 9.10 are intended to provide for an allocation of the Obligations among the Loan Parties. Accordingly, as between the Loan Parties, if any Loan Party (the "Overpaying Loan Party") pays (whether directly or by application of Collateral), or is otherwise held liable for, Obligations in excess of the Loan Party Pro Rata Share for the Overpaying Loan Party, the other Loan Parties will pay the amount of such excess to the Overpaying Loan Party and will indemnify the Overpaying Loan Party for, from and against any claims, damages, loss or liability arising from or related to such overpayment. Loan Parties agree to maintain books and records accurately reflecting each Loan Party Pro Rata Share. This subsection is only intended to allocate payments, losses, and liabilities among Loan Parties in order that (a) as among Loan Parties, each Loan Party is ultimately liable for its Loan Party Pro rata Share; and (b) the value to each Loan Party of the resulting rights and claims against other Loan Party pursuant to this subsection will assure that no Loan Party is rendered "insolvent" by virtue of the Obligations for purposes of any applicable Law relating to fraudulent conveyances and similar claims. The rights and obligations among Loan Parties pursuant to this Section 9.10 shall survive the payment and performance of the Obligations, shall be considered as Intercompany Indebtedness, and shall be subject to the other provisions of this

Article 9. "Loan Party Pro Rata Share" means the amount of Loan proceeds actually advanced to or for the benefit of each Loan Party as reflected on the books and records of such Loan Party.

ARTICLE 10 - MISCELLANEOUS

Section 10.1. Waiver, Amendment and Cumulative Rights. No failure on the part of the Lender to exercise and no delay in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The remedies herein and in any other Loan Document are cumulative and not exclusive of any other rights and remedies which the Lender would otherwise have at law, in equity or by statute, and all such rights and remedies, together with the Lender's rights and remedies under the other Loan Documents, are cumulative and may be exercised individually, concurrently, successively and in any order. No amendment, modification or waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall be effective unless the same shall be in writing and signed by the Lender, and then such amendment, modifications, waiver or consent shall be effective only in the specific instances and for the specific purpose for which given.

Section 10.2. Costs, Expenses and Taxes. The Loan Parties agree to pay on demand all out of pocket expenses incurred by the Lender and its affiliates (including the reasonable fees, charges and disbursements of counsel) in connection with due diligence, preparation, administration, negotiation, execution, delivery, amendment, administration and enforcement of the Loan Documents and in connection with the collection of the Obligations. The obligations of the Loan Parties under this Section 10.2 shall survive any termination of this Agreement. All of the foregoing costs and expenses may be charged to the Borrower as Loans or to another deposit account of any Loan Party.

Section 10.3. Indemnity. Each Loan Party shall indemnify Lender, its affiliates, and each of their respective directors, officers, employees, agents, advisors, and consultants (each such Person being called an "Indemnified Person") against, and hold each Indemnified Person harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of counsel for any Indemnitee), incurred by or asserted against any Indemnified Person by any Person arising out of, in connection with, or as a result of (a) the execution, delivery, or performance of any Loan Document, (b) the use of the proceeds of any Loan or use of any Letter of Credit, (c) any environmental liability related in any way to a Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Loan Party, and regardless of whether any Indemnified Person is a party thereto; provided, however, that the Loan Parties shall have no obligation hereunder to an Indemnified Person with respect to any of the foregoing to the extent resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a court of competent jurisdiction by final and nonappealable judgment. The indemnity set forth herein shall be in addition to any other obligations or liabilities of each Loan Party to each Indemnified Person under the Loan Documents or at common law or otherwise. The obligations of each Loan Party under this Section shall survive any termination of this Agreement.

Section 10.4. Notices. Except when telephonic notice is expressly authorized by this Agreement, any notice or other communication to any party in connection with this Agreement shall be in writing and shall be delivered by hand or overnight courier service or mailed by certified or registered mail, as follows:

If to any Loan Party, to the Loan Party Representative at: Beyond, Inc. Attention: E. Glen Nickle, Chief Legal Officer 799 W. Coliseum Way	If to the Lender, to the Lender at: BMO Bank N.A. Attention: James Kerr, Director 1850 North Central Ave. Suite 1500 Phoenix, AZ 85004 Email: jamesr.kerr@bmo.com

Midvale, UT 84047 with copies (which shall not constitute notice to the Loan Parties) to: Latham & Watkins LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611 Attention: Eric Swibel; Noah Weiss Email: eric.swibel@lw.com; noah.weiss@lw.com	

All such notices and other communications shall be deemed to have been given (a) when received, if delivered by hand, (b) on the first Business Day after the date of sending if sent by overnight courier, or (c) on the third Business Day after the date of mailing if mailed by certified or registered mail. Any party hereto may change its address for notices and other communications hereunder by notice to the other parties hereto.

Section 10.5. Survival of Representations. All representations and warranties contained in Article 5, and in the other Loan Documents shall survive the delivery of this Agreement and the making of any Loans hereunder.

Section 10.6. Successors; Participations; Information. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the parties hereto and the successors and assigns of the Lender (including any affiliate of Lender that issues any Letter of Credit). The Loan Parties shall not assign their rights or duties hereunder without the written consent of the Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). The Lender may at any time sell, assign, transfer, grant participations in or otherwise dispose of all or any portion of its rights or obligations under the Loan Documents to any Person. The Lender may furnish any information concerning the Loan Parties in the possession of the Lender from time to time (i) to affiliates of the Lender in connection with banking business of the Lender or such affiliates and (ii) to any direct, indirect, actual or prospective, buyer, assignee, participant, insurer, reinsurer or party to any swap, derivative, or securitization transaction relating to the Loan Parties or the Obligations and (iii) in response to credit inquiries consistent with general banking practice.

Section 10.7. Severability. Any provision of the Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 10.8. Subsidiary References. The provisions of this Agreement relating to Subsidiaries shall apply only during such times as the Borrower has one or more Subsidiaries.

Section 10.9. Captions. The captions or headings herein and any table of contents hereto are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

Section 10.10. Entire Agreement. This Agreement and the Loan Documents embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof.

Section 10.11. Counterparts; Digital Copies. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and Lender agrees that any Electronic Signature of such Person on or associated with any Communication shall be valid and binding on such Person to

the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, Lender is not under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Lender pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent Lender has agreed to accept such Electronic Signature, Lender shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and without further verification and (b) upon the request of Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

Each of the Loan Parties hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document or any Communication based solely on the lack of paper original copies of this Agreement, such other Loan Document or such Communication, and (ii) waives any claim against Lender and its Related Parties for any liabilities arising solely from Lender's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 10.12. Time of the Essence. Time is of the essence in this Agreement and all of the other Loan Documents.

Section 10.13. No Partnership, Joint Venture or Agency. The Lender is not the agent or representative of any Loan Party, and no Loan Party is the agent or representative of the Lender, and nothing in this Agreement will be construed to make the Lender liable to anyone for goods delivered or services performed upon any Loan Party's properties or for debts or claims accruing against any Loan Party. Neither anything contained herein nor the acts of the parties hereto will be construed to create a partnership or joint venture between any Loan Party and the Lender.

Section 10.14. No Third Party Beneficiaries. All conditions to the obligations of the Lender to make advances hereunder are imposed solely and exclusively for the benefit of the Lender and its assigns and no other Person will have standing to require satisfaction of such conditions or be entitled to assume that the Lender will not make disbursements in the absence of strict compliance with any or all thereof and no other Person, under any circumstances, will be deemed to be beneficiary of such conditions, any or all of which may be waived in whole or in part by the Lender at any time if the Lender in its sole discretion deems it advisable to do so.

Section 10.15. Customer Identification - Patriot Act Notice. The Lender hereby notifies the Loan Parties that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties and other Guarantors, which information includes the name and address of the Loan Parties and other Guarantors, and other information that will allow the Lender to identify the Loan Parties and other Guarantors in accordance with the Patriot Act.

Section 10.16. Customary Advertising Material. The Loan Parties consent to the publication by the Lender of customary advertising material (including customary "tombstone" disclosure) relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties

Section 10.17. Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision), and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to the Loan Documents, shall be governed by and construed in accordance with the internal laws (but otherwise without regard to the conflict of laws provisions) of the State of Illinois.

(b) Subject to the last sentence of this Section 10.17(b), each Loan Party hereby irrevocably and unconditionally, for itself and its property, (i) submits to the exclusive jurisdiction of the U.S. Federal or Illinois state courts located in Cook County, Illinois and (ii) agrees that any suit, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, based upon, arising out of or relating to this agreement, any Loan Document or the transactions relating hereto or thereto (including, without limitation, any suit, action, litigation or proceeding of any kind or description, against the Lender, its affiliates or any of their respective directors, officers, employees, agents or advisors) or for recognition or enforcement of any judgment shall be heard and determined in such U.S. Federal or Illinois state court located in Cook, County, Illinois. Each party to this agreement agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this agreement or any other Loan Document shall affect any right that the Lender may otherwise have to bring any action or proceeding against any Loan Party or its property in the courts of any other jurisdiction.

(c) Each party to this agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action, litigation or proceeding based upon, arising out of or relating to this agreement or any other Loan Document in any court referred to in Section 10.17(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action, litigation or proceeding in any such court.

(d) Each party to this agreement irrevocably consents to service of process in the manner provided for notices in Section 10.4. Nothing in this agreement or any other Loan Document will affect the right of any party to this agreement to serve process in any other manner permitted by law.

Section 10.18. WAIVER OF JURY TRIAL. EACH OF THE LOAN PARTIES AND THE LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

Section 10.19. Waiver. Of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each Loan Party shall not assert, and hereby waives, any claim against the Lender (and any sub-agent thereof), any of its affiliates and the Lender's and its affiliates' respective partners, directors, officers, employees, agents, brokers, trustees, administrators, managers, advisors and representatives, including accountants, auditors and legal counsel (each such Person being called an "Protected Person"), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Protected Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

[Remainder of page intentionally blank]

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

BORROWER: BEYOND, INC.
a Delaware Corporation

By: /s/ Marcus Lemonis
Name: Marcus Lemonis Title: Executive Chairman

LENDER: BMO BANK N.A.,
a national banking association

By:
Name: Title:

[Signature Page to Loan and Security Agreement]

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

BORROWER: BEYOND, INC.

a Delaware Corporation

By:__ Name: Adrianne Lee
Title: Chief Financial and Administrative Officer

LENDER:

BMO BANK N.A.
a national banking association

By:_____
Name: JOSEPH NICOLAI
Title: VICE PRESIDENT

[Signature Page to Loan and Security Agreement]

SCHEDULE 5.7

Subsidiaries; Outstanding Capital Stock

Subsidiary	Record Owner	Percentage Ownership
COMMERCIAL STRATEGIES, INC.	BEYOND, INC.	100%
O AGENCY GROUP, INC.	BEYOND, INC.	100%
SUPPLIER OASIS FULFILLMENT SERVICES, INC.	BEYOND, INC.	100%
OVERSTOCK.COM SERVICES, INC.	BEYOND, INC.	100%
O.COM GIFT CARDS, INC.	BEYOND, INC.	100%
PEACE COLISEUM MEZZANINE, LLC	BEYOND, INC.	100%
O.COM LAND, LLC	BEYOND, INC.	100%
MEDICI VENTURES, L.P.	BEYOND, INC.	99%
PEACE COLISEUM, LLC	PEACE COLISEUM MEZZANINE, LLC	100%
SPEEDROUTE, LLC	BEYOND, INC. MEDICI VENTURES, L.P.	49% 49%

[Schedule 5.7]

SCHEDULE 5.14

Jurisdiction of Organization; Chief Executive Office; Etc.

Legal Name: Beyond, Inc.

Jurisdiction of Organization: Delaware Federal Tax Id Number: 87-0634302 Organizational Id Number: 3496781

Address of Chief Executive Office: 799 W. Coliseum Way, Midvale, UT 84047 States where foreign qualified:
Prior legal names and jurisdictions of organization within last five years: Overstock.com, Inc. (Delaware)

[Schedule 5.14]

EXHIBIT A

Notice of Borrowing

Date: __, __

To: BMO Bank N.A.

Ladies and Gentlemen:

Reference is made to that certain Loan and Security Agreement, dated as of October 18, 2024 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, and including all Schedules, and Exhibits attached thereto or incorporated therein, the "Loan Agreement"; the terms defined therein being used herein as therein defined), among BEYOND, INC., the other Loan Parties party thereto, and BMO Bank N.A.

The undersigned hereby requests (select one):

☐ A Revolving Loan

1. On __(a Business Day).

2. In the amount of $__.

In connection with any Loan requested hereunder, the matters set forth in Section 3.2 of the Loan Agreement are true, correct and complete as of the date hereof.

Beyond, Inc.

By:
Name: __ Title: __

[Exhibit A]

EXHIBIT B

Form of Revolving Note

See attached.

REVOLVING NOTE

$25,000,000.00 **Phoenix, Arizona**
October 18, 2024

FOR VALUE RECEIVED, the undersigned, BEYOND, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of BMO BANK N.A., a national banking association (the "Lender") the principal amount of TWENTY FIVE MILLION AND NO/100THS DOLLARS ($25,000,000.00) or, if less, the aggregate unpaid principal amount of all Revolving Loans, in immediately available funds, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Loan Agreement (defined below). The principal hereof and interest accruing thereon shall be due and payable as provided in the Loan and Security Agreement dated as of the date hereof (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Loan Agreement"), by and among the Borrower, the other Loan Parties party to the Loan Agreement and the Lender. All capitalized terms used herein which are defined in the Loan Agreement and not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

This Revolving Note is a Loan Document under the Loan Agreement and is entitled to the benefits and security, and is subject to the terms and conditions, of the Loan Agreement, including the terms and conditions under which this Revolving Note may be prepaid or the Maturity Date accelerated. All principal of and accrued and unpaid interest on the Revolving Loans shall be paid in full on the Maturity Date. Payments of principal and interest under this Revolving Note shall be made in lawful money of the United States of America.

Upon the occurrence of an Event of Default, the outstanding principal balance hereunder, together with any accrued but unpaid interest and together with all of the other Obligations, may be accelerated and become immediately due and payable at the option of the Lender and without demand or notice of every kind (which are hereby expressly waived by the Borrower).

The Borrower hereby agrees to pay all costs of collection, including reasonable attorneys' fees, in accordance with the Loan Agreement. The Borrower expressly waives demand for payment, presentment, notice of nonpayment, protest, notice of protest and notice of dishonor. All notices, requests, demands and other communications required or permitted to be given hereunder will be given in the manner provided in the Loan Agreement.

This Revolving Note, and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Revolving Note, shall be governed by and construed in accordance with the internal laws (but otherwise without regard to the conflict of laws provisions) of the State of Illinois.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Revolving Note to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

BEYOND, INC., a Delaware corporation

By: __ Name: Adrianne Lee
Title: Chief Financial and Administrative Officer

[Exhibit B]

Exhibit 10.24

REVOLVING NOTE

$25,000,000.00 **Phoenix, Arizona**

October 18, 2024

FOR VALUE RECEIVED, the undersigned, BEYOND, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of BMO BANK N.A., a national banking association (the "Lender") the principal amount of TWENTY FIVE MILLION AND NO/100THS DOLLARS ($25,000,000.00) or, if less, the aggregate unpaid principal amount of all Revolving Loans, in immediately available funds, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Loan Agreement (defined below). The principal hereof and interest accruing thereon shall be due and payable as provided in the Loan and Security Agreement dated as of the date hereof (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Loan Agreement"), by and among the Borrower, the other Loan Parties party to the Loan Agreement and the Lender. All capitalized terms used herein which are defined in the Loan Agreement and not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

This Revolving Note is a Loan Document under the Loan Agreement and is entitled to the benefits and security, and is subject to the terms and conditions, of the Loan Agreement, including the terms and conditions under which this Revolving Note may be prepaid or the Maturity Date accelerated. All principal of and accrued and unpaid interest on the Revolving Loans shall be paid in full on the Maturity Date. Payments of principal and interest under this Revolving Note shall be made in lawful money of the United States of America.

Upon the occurrence of an Event of Default, the outstanding principal balance hereunder, together with any accrued but unpaid interest and together with all of the other Obligations, may be accelerated and become immediately due and payable at the option of the Lender and without demand or notice of every kind (which are hereby expressly waived by the Borrower).

The Borrower hereby agrees to pay all costs of collection, including reasonable attorneys' fees, in accordance with the Loan Agreement. The Borrower expressly waives demand for payment, presentment, notice of nonpayment, protest, notice of protest and notice of dishonor. All notices, requests, demands and other communications required or permitted to be given hereunder will be given in the manner provided in the Loan Agreement.

This Revolving Note, and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Revolving Note, shall be governed by and construed in accordance with the internal laws (but otherwise without regard to the conflict of laws provisions) of the State of Illinois.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Revolving Note to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

BEYOND, INC.

a Delaware Corporation

By: /s/ Marcus Lemonis
Name: Marcus Lemonis
Title: Executive Chairman

Exhibit 19

Beyond, Inc. Insider Trading Policy

1. Purpose

The Board of Directors of Beyond, Inc. (the "***Company***") has adopted this Insider Trading Policy (the "***Policy"***) to promote compliance with certain federal and other securities laws. The violation of these laws, sometimes called "Insider Trading" laws, can bring heavy penalties, including the possibility of dismissal from the Company, civil fines, and criminal charges. Careful observance of this Policy is intended not only protect the Company, but also its Associates (as defined below) from charges of violation of these laws.

2. Persons Subject to this Policy

This Policy applies to all Company and its subsidiaries' employees, executives, officers and directors, all of whom are referred to herein as, "***Company Associates***" or "***Associates***." This Policy also applies to Associate family members and people living in an Associate household and to entities or persons that an Associate controls. From time to time the Company may also determine that other persons should be subject to this Policy.

3. Transactions Subject to this Policy

This Policy applies to transactions (including purchases, sales, gifts or other transfers) in the Company's securities ("***Company Securities***"), including the Company's common stock, restricted stock units, options to purchase common stock, or any other type of securities that the Company may issue, including, but not limited to preferred stock, convertible debentures and warrants, and derivative securities that are not issued by the Company, such as exchange-traded put or call options or swaps relating to Company Securities.

4. Individual Responsibility

Compliance with this Policy is an individual responsibility, and Company Associates must also assure that their family and/or household members comply with this Policy. Compliance with Insider Trading laws is also an individual obligation. Any action or statement on the part of the Company, the Compliance Officer or any other employee or director pursuant to this Policy (or otherwise), including a preclearance of a particular trade or approval of a Rule 10b5-1 Plan (as defined below) does not constitute legal advice to you or insulate you from a charge of violating securities laws. You should always feel free to consult with your own attorney about any trading in Company Securities.

5. Administration of the Policy – Compliance Officer

The Company's Chief Legal Officer or his or her designee shall serve as the Compliance Officer for the purposes of this Policy, and in his or her absence, the President may appoint an alternate Compliance Officer. The Chief Financial and Administrative Officer will administer this Policy as it applies to any trading activity by the Compliance Officer. The Compliance Officer has authority to interpret and implement this Policy. All decisions by the Compliance Officer shall be final.

6. Statement of Policy

It is the policy of the Company that no Company Associate who is aware of material nonpublic information about the Company, shall, directly or indirectly, or through family members or other persons or entities:

a. trade in Company Securities, including gifts and pledges, except as otherwise specified in this Policy under the headings, "Transactions Under Company Plans" and "Rule 10b5-1 Plans;"

b. recommend the purchase or sale of any Company Securities;

c. disclose material nonpublic information to Associates whose jobs do not require them to have that information, or to persons who are not Associates, unless such disclosure is in accordance with Company policies; or

d. assist anyone engaged in the above activities.

In addition, it is the policy of the Company that no Associate who learns of material nonpublic information about another company, including about a Company partner or vendor, may trade in that company's securities or disclose the information to others (other than Associates whose jobs require them to have that information) until the information becomes public or is no longer material.

There are no exceptions to these prohibitions, except as outlined in this Policy.

7. Definition of Material Nonpublic Information

Information is "material" if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding whether to take some action (e.g., buy, sell or hold) with respect to the Company's securities, or if the information is likely to have a significant effect on the market price of the securities. It's important to remember that "material information" can be positive or negative. While it is not possible to list all categories of material information, the following are some examples of information that ordinarily would be regarded as "material":

- Financial results and projections;
- Revenue, expense and other significant measures relevant to future earnings or losses;
- Projections of future earnings or losses, or other earnings guidance, and changes to any guidance;
- Important information about significant Company contracts;
- A pending or proposed merger or other acquisition;
- A pending or proposed purchase or sale of an important part of the business or significant asset;
- A pending or proposed joint venture or other significant corporate relationship;
- A potential restructuring or significant non-cash charges;
- Significant related party transactions;
- A change in dividend policy, the declaration of a stock split, or an offering of additional securities;
- Bank borrowings or other important financing transactions;
- The establishment of a repurchase program for Company Securities;
- Significant new business announcements;
- Significant potential liabilities or contingencies;
- A cybersecurity or data security incident;
- A significant change or expected change in management;
- A change in auditors or notification that the auditor's reports may no longer be relied upon;
- An anticipated default under an important contract or financing arrangement that would have significant consequences;
- Positive or negative developments in significant litigation or regulatory actions; and
- The existence or projection of severe cash problems or a substantial likelihood of a bankruptcy filing.

If you are not sure whether specific information is material, you may discuss the matter with the Compliance Officer, but should err on the side of caution by assuming that it is material.

Information is "nonpublic" if it is not generally known or available to the public. Information is considered to be public only when it has been widely disseminated to the public in a Regulation FD-compliant method such as through a media outlet like the widely- disseminated press release, a broadcast on widely-available radio or television programs, publication in a widely-available newspaper, magazine or news website, or through public disclosure documents filed with the SEC that are available on the SEC's website. Once disclosed, public information must have had sufficient time since the disclosure to become a matter of general public knowledge. Consequently, you must wait until the second trading day after public disclosure in the above manner before considering that the disclosed non-public information you knew of privately, has since become a matter of public knowledge.

When nonpublic information is disclosed in ways that do not involve use of broad media or other broad means of dissemination, the disclosure may not change the non-public status of the information. For example, information would not likely be considered "public information" if it was only disclosed to a select group of individuals, or through a publication that had only a small circulation or through broadcast on a media platform that was not widely followed.

8. Transactions by Entities

This Policy applies to any entities that any individual subject to this Policy influences or controls, including any corporations, limited liability companies, partnerships or trusts (collectively referred to as "***Controlled Entities***"), and transactions by these Controlled Entities should be treated for the purposes of this Policy and applicable securities laws as if they were for the individual's own account.

9. Transactions Under Company Plans

This Policy does not apply in the case of the following transactions, except as specifically noted:

a. Restricted Stock Unit Awards

This Policy does not apply to the vesting of restricted stock units, or the exercise of a tax withholding right pursuant to which you elect to have the Company withhold shares of stock to satisfy tax withholding requirements upon the vesting of any restricted stock units. However, the Policy *does* apply to any market sale of stock received upon the vesting of restricted stock units.

b. 401(k) Plan

This Policy does not apply to purchases of Company Securities in the Company's 401(k) plan, resulting from your routine, periodic contribution of money to the plan pursuant to your payroll deduction election. However, this Policy does apply, to certain elections you may make under the 401(k) plan which would result in a change in your 401(k) plan position in a Company stock fund, including: (a) an election to increase or decrease the percentage of your periodic contributions that will be allocated to the Company stock fund (including an increase resulting from an election to participate in the plan and allocate contributions to the Company stock fund); (b) an election to make an intra-plan transfer of an existing account balance into or out of the Company stock fund; (c) an election to borrow money against your 401(k) plan account if the loan will result in a liquidation of some or all of your Company stock fund balance; and (d) an election to pre-pay a plan loan if the pre-payment will result in allocation of loan proceeds to the Company stock fund.

c. Stock Option Exercises

This Policy does not apply to the exercise of an employee stock option acquired under the Company's option plans, or to the exercise of a tax withholding right by which a person has elected to have the Company withhold option shares to satisfy tax withholding requirements. This Policy does apply, however, to any sale of the underlying stock, whether upon exercise of the option, or as part of a broker-assisted cashless exercise of an option, and to any other market sale for the purpose of generating the cash needed to pay the exercise price of an option.

d. Purchases from, or Sales to the Company

Any other purchase of Company Securities from the Company or sales of Company Securities to the Company are not subject to this Policy.

e. Transactions in Mutual Funds

Transactions in mutual funds that are invested in Company Securities are not subject to this Policy.

f. Rule 10b5-1 Plans

Transactions under a pre-cleared Rule 10b5-1 plan, as covered in Section 12 below.

10. Prohibited and Discouraged Transactions

a. Short Sales

A "short sale" is the sale of a borrowed security which the seller hopes to purchase and replace later when the stock drops in price. Thus, a short sale is a bet that the Company's stock price will fall. Company Associates may not engage in short sales of Company Securities or of securities issued by any company or entity in which the Company owns 5% or more of such company or entity's common equity (for purposes of this section regarding Prohibited and Discouraged Transactions, a "***Subsidiary***").

b. Publicly-Traded Options and Other Derivatives

Company Associates may not engage in transactions in put options, call options or other derivative securities relating to Company Securities. This prohibition does not apply to convertible securities, warrants or other similar instruments issued by the Company or any Subsidiary or otherwise exempted from this prohibition by the Board, or to the receipt, ownership and exercise of options, restricted stock units and other awards under the Company's or any Subsidiary's incentive or compensation plans.

c. Hedging and Similar Transactions

Company Associates may not engage in "hedging" or similar transactions intended to hedge against or offset or profit from any decrease in the value of Company Securities or Subsidiary securities. Some examples of prohibited hedging or similar transactions include, the use of financial instruments such as prepaid variable forwards, equity swaps, collars and exchange funds. This paragraph does not apply to or prohibit any investment on any publicly-offered mutual fund or any publicly-offered exchange traded fund (ETF).

d. Standing and Limit Orders

Standing and limit orders (except standing and limit orders under approved Rule 10b5-1 Plans, as described below) create heightened risks for insider trading violations because they may be executed by a broker when a Company Associate is in possession of material nonpublic information or during a restricted period. The Company therefore discourages placing standing or limit orders on Company Securities by officers, directors and employees. If an Associate determines that he or she must use a standing order or limit order, the order should not be placed or executed at a time the Associate is in possession of material nonpublic information. Note: any standing limit order must be canceled if the Associate becomes aware of material nonpublic information. For the avoidance of doubt, with respect to individuals subject to pre-clearance, either an entry into or cancellation of a limit order is subject to pre-clearance.

11. Additional Restrictions and Procedures

The Company has established additional restrictions and procedures as additional protections against insider trading, and to avoid the appearance of insider trading. These additional procedures are applicable only to those individuals described below.

a. Trade Pre-Clearance

All employees of the Company who hold the title of Vice President or a more senior title, and other persons designated by the Compliance Officer as being subject to these pre- clearance procedures, as well as the family or household members and Controlled Entities of such persons, may not engage in any transaction in Company Securities without first obtaining pre-clearance of the transaction from the Compliance Officer. A request for pre-clearance should be submitted to the Compliance Officer in writing well before the transaction, but in no case, less than two business days in advance. The Compliance Officer will consider facts of the transaction, including the application of any trading restrictions and whether the person possesses material nonpublic information. The person submitting the request is under obligation to fully disclose all transaction- related facts and truthfully answer the Compliance Officer's questions. In addition, the person submitting the request must certify that he or she is not aware of material nonpublic information about the Company. If the Compliance Officer does not pre-clear the transaction for trading, the person who sought the pre- clearance is not permitted to engage in the transaction, and should not inform any other person of the outcome of the request for pre-clearance.

Once pre-clearance is granted and before execution of the proposed trade, if there is a change in the information the requestor provided to the Compliance Officer, the requestor must promptly notify the Compliance Officer before the proposed trade is executed.

Pre-clearance does not relieve any Associate of individual responsibility for the legality of any trade. Pre-clearance is not legal advice, nor is it a defense to a charge of insider trading or a defense to a charge amounting to violation of any securities law or SEC rule.

For the avoidance of doubt, any gift or pledge of Company Securities, including to a charitable organization or for estate-planning purposes is considered a "transaction" in Company Securities that requires pre-clearance in accordance with this Policy.

b. Quarterly Trading Restrictions

All Associates as well as any other persons designated by the Compliance Officer as subject to this restriction, as well as their respective family members and Controlled Entities, may not trade in the Company Securities (other than as specified by this Policy), during the "***Blackout Periods***" described below:

- After the market close on March 15 until the market opens on 2nd trading day after the Q1 earnings release;
- After the market close on June 15 until the market opens on 2nd trading day after the Q2 earnings release;
- After the market close on September 15 until the market opens on 2nd trading day after the Q3 earnings release; and
- After the market close on December 15 until market opens on 2nd trading day after the Q4 earnings release.

A "trading day" is a day on which U.S. national stock exchanges are open for trading. When no Blackout Period is in effect, Company Associates are still subject to the other trading restrictions of this Policy, such as refraining from trading in Company Securities while the Associate may know of material nonpublic information.

c. Event-Specific Trading Restriction Periods

From time to time, an event may occur that is material to the Company and is known by only certain individuals. So long as the event remains material and nonpublic, the persons designated by the Compliance Officer may not trade Company Securities. In addition, the Company's ongoing financial results or other significant information about the Company may be sufficiently material that, in the judgment of the Compliance Officer, designated persons (which may in some circumstances include all employees) should refrain from trading in Company Securities, even before a Blackout Period applies. In that situation, the Compliance Officer may notify these persons that they should not trade in the Company's Securities, without disclosing the reason for the restriction. Sometimes, these periods will be designated as "***Special Blackout***." The existence of a Special Blackout Period may apply only to a limited group of Associates, and should not be communicated to any other person.

d. Exceptions

The quarterly trading restrictions and event-driven trading restrictions do not apply to those transactions to which this Policy does not apply, as described above under the headings "Transactions Under Company Plans" and "Rule 10b5-1 Plans."

Further, the requirement for pre-clearance, the quarterly trading restrictions and event-driven trading restrictions do not apply to transactions conducted pursuant to approved Rule 10b5-1 plans, described under the heading "Rule 10b5-1 Plans."

12. Rule 10b5-1 Plans

The restrictions in this Policy (except for provisions set forth in "Prohibited and Discouraged Transactions" above) do not apply to transactions under a trading plan (a "***Rule 10b5-1 Plan***") that satisfies either:

- the conditions of Rule 10b5-1 under the Exchange Act; or
- the elements of a non-Rule 10b5-1 trading arrangement as defined in Item 408(c) of Regulation S-K; and
- the Compliance Officer has pre-approved.

If followed, such Rule 10b5-1 Plan could allow trades in Company Securities even during a Blackout Period, Special Blackout periods, or at other times when an Associate knows of material nonpublic information. Once an Associate adopts a Rule 10b5- 1 Plan, the Associate's broker must execute any trades for the Associate according to such plan and not according to any further directions outside the plan from the Associates.

If an Associate wishes to know more about entering into a Rule 10b5-1 Plan, the Compliance Officer will provide plan information. Because a Rule 10b5-1 Plan must be entered into (or subsequently modified or terminated) at a time when the person entering into the plan is not aware of material nonpublic information or during a restricted trading period, and there is an SEC-mandated cooling-off period between plan adoption or modification and any trade under the plan, Associates wishing to enter into or modify or terminate a plan must do so well in advance of the time the Associate wishes to have a plan effective and only with the Compliance Officer's pre-approval. For the avoidance of doubt, Rule 10b-5-1 Plans are available to be used for gifts of Company Securities.

The Compliance Officer may impose such other conditions on the implementation and operation of a Rule 10b5-1 Plan as the Compliance Officer deems necessary or advisable.

The Company also reserves the right from time to time to suspend, discontinue, or otherwise prohibit transactions under a Rule 10b5-1 Plan if the Compliance Officer or the Board of Directors, in its discretion, determines that such suspension, discontinuation, or other prohibition is in the best interests of the Company.

Compliance of a Rule 10b5-1 Plan with the terms of Rule 10b5-1 and the execution of transactions pursuant to the Rule 10b5-1 Plan are the sole responsibility of the person initiating the Rule 10b5-1 Plan, and none of the Company, the Compliance Officer, or the Company's other employees assumes any liability for any delay in reviewing and/or refusing to approve a Rule 10b5-1 Plan submitted for approval, nor the legality or consequences relating to a person entering into, informing the Company of, or trading under, a Rule 10b5-1 Plan.

During the effectiveness of an Associate's Rule 10b5-1 Plan, the Associate need not pre- clear trades, nor be concerned for transactions effected according to the plan even if these transactions fall during restricted trading periods.

13. Post-Termination Transactions

This Policy continues to apply to Associates even when they are no longer employed by or affiliated with the Company. For instance, if an Associate possesses of material nonpublic information when his or her service terminates, that individual may not trade in Company Securities until that information becomes public or is no longer material. However, the pre- clearance procedures specified in the section entitled, "Additional Restrictions and Procedures," will cease to apply to transactions in Company Securities upon the expiration of any Blackout Period or other Company-imposed trading restrictions applicable at the time of the termination of service.

14. Consequences of Violations

The SEC and other state and federal prosecutorial agencies vigorously enforce Insider Trading laws by both civil actions and criminal prosecutions which often result in significant fines and imprisonment. Actions against companies and the persons who control companies are also possible if they fail to take reasonable steps to prevent insider trading by company personnel.

Associates who fail to comply with this Policy will be subject to Company-imposed sanctions, up to and including dismissal.

15. Review

This Policy is subject to review and modification by the Company at any time.

16. Company Assistance

Any person who has a question about this Policy or its application to any proposed transaction may obtain additional guidance from the Compliance Officer, who can be reached by telephone at (801) 947-3100 or by e-mail at generalcounsel@beyond.com.

5.3
Last Updated February 4, 2025

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements (Nos. 333-207141 and 333-280076) on Form S-3 and (Nos. 333-123540, 333-124441, 333-160512, 333-162674, 333-181422, 333-184344, 333-203175, 333-203176, 333-256179, 333-273751 and 333-280078) on Form S-8 of our reports dated February 25, 2025, with respect to the consolidated financial statements of Beyond, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Salt Lake City, Utah
February 25, 2025

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements: Registration Statements on Form S-8 (Nos. 333-123540, 333-124441, 333-160512, 333-162674, 333-181422, 333-184344, 333-203175, 333-203176, 333-256179, 333-273751 and 333-280078) and Registration Statements on Form S-3 (Nos. 333-207141 and 333-280076) of Beyond, Inc., of our report dated February 14, 2023, with respect to the financial statements of Medici Ventures, L.P., included in the Annual Report (Form 10-K) of Beyond, Inc., for the year ended December 31, 2024.

/s/ ERNST & YOUNG LLP

Salt Lake City, Utah
February 25, 2025

Exhibit 23.3

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements: Registration Statements on Form S-8 (Nos. 333-123540, 333-124441, 333-160512, 333-162674, 333-181422, 333-184344, 333-203175, 333-203176, 333-256179, 333-273751 and 333-280078) and Registration Statements on Form S-3 (Nos. 333-207141 and 333-280076) of Beyond, Inc., of our report dated December 21, 2023, with respect to the financial statements of Medici Ventures, L.P., included in the Annual Report (Form 10-K) of Beyond, Inc., for the year ended December 31, 2024.

/s/ ERNST & YOUNG LLP

Salt Lake City, Utah
February 25, 2025

Exhibit 23.4

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements: Registration Statements on Form S-8 (Nos. 333-123540, 333-124441, 333-160512, 333-162674, 333-181422, 333-184344, 333-203175, 333-203176, 333-256179, 333-273751 and 333-280078) and Registration Statements on Form S-3 (Nos. 333-207141 and 333-280076) of Beyond, Inc., of our report dated December 17, 2024, with respect to the financial statements of Medici Ventures, L.P., included in the Annual Report (Form 10-K) of Beyond, Inc., for the year ended December 31, 2024.

/s/ ERNST & YOUNG LLP

Salt Lake City, Utah
February 25, 2025

Exhibit 23.5

Consent of Independent Auditors

We consent to the incorporation by reference in the registration statements (Nos. 333-123540, 333-124441, 333-160512, 333-162674, 333-181422, 333-184344, 333-203175, 333-203176, 333-256179, 333-273751, and 333-280078) on Form S-8 and (Nos. 333-207141 and 333-280076) on Form S-3 of Beyond, Inc. of our report dated October 14, 2024 with respect to the consolidated financial statements of tZERO Group, Inc. included in this Annual Report on Form 10-K.

/s/ BAKER TILLY US, LLP

New York, New York
February 25, 2025

Exhibit 31.1

CERTIFICATION

I, David J. Nielsen, certify that:

1. I have reviewed this Annual Report on Form 10-K of Beyond, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2025

/s/ DAVID J. NIELSEN
David J. Nielsen
President
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Adrianne B. Lee, certify that:

1. I have reviewed this Annual Report on Form 10-K of Beyond, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2025

/s/ ADRIANNE B. LEE

Adrianne B. Lee
Chief Financial & Administrative Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, David J. Nielsen, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that the Annual Report on Form 10-K of Beyond, Inc. for the year ended December 31, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Beyond, Inc.

Date: February 25, 2025

/s/ DAVID J. NIELSEN
David J. Nielsen
President
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Adrianne B. Lee, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that the Annual Report on Form 10-K of Beyond, Inc. for the year ended December 31, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Beyond, Inc.

Date: February 25, 2025

/s/ ADRIANNE B. LEE
Adrianne B. Lee
Chief Financial & Administrative Officer
(Principal Financial Officer and Principal Accounting Officer)

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Report of Independent Auditors

The General Partner
Medici Ventures, L.P.

Opinion

We have audited the financial statements of Medici Ventures, L.P., (the "Partnership"), which comprise the statement of assets and liabilities, including the schedule of investments, as of September 30, 2024, and the related statements of operations, changes in partners' capital and cash flows for the year then ended, and the related notes (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Partnership at September 30, 2024, and the results of its operations and its cashflows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Partnership and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Partnership's ability to continue as a going concern for one year after the date that the financial statements are available to be issued.

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Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free of material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Partnership's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Ernst & Young LLP

December 17, 2024

A member firm of Ernst & Young Global Limited

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Statement of Assets and Liabilities
September 30, 2024

Assets		
Investments, at fair value (Note 3, cost of $211,665,890)	$	55,318,489
Cash		10,478,435
Prepaid management fees		1,458,333
Total assets		67,255,257
Liabilities and partners' capital		
Performance fee liability (Note 8)		9,228,081
Related party payable (Note 9)		18,357
Total liabilities		9,246,438
Partners' capital - general partner		1,462,583
Partners' capital - limited partner		56,546,236
Total partners' capital		58,008,819
Total liabilities and partners' capital	$	67,255,257

See accompanying notes to financial statements.

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Schedule of Investments
September 30, 2024

	Number of shares/units	Cost	Fair value [1]	Percentage of partners' capital
Portfolio investments, at fair value:				
Private operating companies				
Blockchain and financial technology services:				
United States				
tZERO Group, Inc.				
Common stock	112,095,577	$ 101,405,000	$ 12,330,513	21.3%
Series B preferred stock	9,140,645	5,025,069	1,828,129	3.2%
		106,430,069	14,158,642	24.5%
Bitt, Inc.				
Series Seed preferred stock	22,652,459	17,674,000	226,525	0.4%
Series Seed-2 preferred stock	797,399	1,579,233	7,974	0.0%
Series Seed-3 preferred stock	1,285,619	3,182,709	25,712	0.0%
Warrants	3,214,047		64,281	0.1%
		22,435,942	324,492	0.5%
Medici Land Governance, Inc.				
Common stock	870,487	14,044,000	—	0.0%
PeerNova, Inc.				
Common stock and warrants	2,642,996	5,758,751	140,791	0.2%
Series A preferred stock	1,405,043	2,336,823	1,208,337	2.1%
Series B preferred stock	596,397	1,499,997	1,419,425	2.4%
		9,595,571	2,768,553	4.7%
Voatz, Inc.				
Series Seed preferred stock	385,516	2,785,967	127,220	0.2%
Series A preferred stock	448,454	3,240,795	219,742	0.4%
Series A-1 preferred stock	30,999	224,017	18,289	0.0%
SAFE note		100,000	100,000	0.2%
SAFE note		150,000	150,000	0.3%
		6,500,779	615,251	1.1%
Minds, Inc.				
Series A preferred stock	670,841	5,999,995	1,556,351	2.7%
GrainChain, Inc.				
Class A common stock	7,173,184	8,392,625	10,335,652	17.8%
Class B common stock	2,391,061	2,797,541	3,445,217	5.9%
SAFE note		1,000,000	1,039,734	1.8%
Convertible note		4,937,654	4,955,688	8.5%
		17,127,820	19,776,291	34.0%
Spera, Inc.				
Series A preferred stock	2,670,583	2,000,000	2,884,230	5.0%

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Schedule of Investments
September 30, 2024

	Number of shares/units	Cost	Fair value [1]	Percentage of partners' capital
FinClusive Capital, Inc.				
Common stock	14,933	$ 3,733,250	$ 271,866	0.5%
Convertible note		1,002,901	929,812	1.6%
Convertible note		563,748	519,497	0.9%
		5,299,899	1,721,175	3.0%
Vital Chain, Inc.				
Common stock	721,658	462,000	—	0.0%
Chainstone Labs, Inc.				
Common stock	3,600,000	3,600,000	1,805,682	3.1%
SpeedRoute, LLC				
Class A units		3,920,000	3,920,000	6.8%
Votem Corp.				
Series B preferred stock	48,780	—	—	0.0%
Netki, Inc.				
Convertible note		1,567,151	1,567,151	2.7%
Total United States		**198,983,226**	**51,097,818**	**88.0%**
Cayman Islands				
Ripio Holding, Inc.				
Series A-1 preferred stock	268,641	4,641,158	1,104,114	1.9%
Series B preferred stock	59,990	2,000,000	1,499,150	2.6%
Warrants	5,999		5,099	0.0%
		6,641,158	2,608,363	4.5%
Total Cayman Islands		**6,641,158**	**2,608,363**	**4.5%**
Belgium				
Settlemint NV				
Series Pre-Seed preferred stock	214,300	3,010,915	1,207,531	2.1%
Series Seed preferred stock	37,450	526,173	220,353	0.4%
Series A preferred stock	14,088	504,418	184,424	0.3%
		4,041,506	1,612,308	2.8%
Total Belgium		**4,041,506**	**1,612,308**	**2.8%**
Luxemborg				
Ambr S.a.r.l				
Preferred stock	3,755,869	2,000,000	—	0.0%
Total Luxemborg		**2,000,000**	**—**	**0.0%**
Total portfolio investments, at fair value		**$ 211,665,890**	**$ 55,318,489**	**95.3%**

[1] As determined by the General Partner (Note 2 and 3).

See accompanying notes to financial statements.

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Statement of Operations
Year ended September 30, 2024

Investment income:	
Interest Income	$ 1,105,612
Total income	1,105,612
Expenses:	
Management fees (Note 5)	2,500,000
Performance fees - unrealized (Note 8)	3,937,347
Professional fees and general expenses	341,904
Total expenses	6,779,251
Net investment loss	(5,673,639)
Realized and unrealized gain (loss) on investments:	
Net unrealized loss on investments	(55,162,132)
Net loss on investments	(55,162,132)
Net decrease in partners' capital from operations	$ (60,835,771)

See accompanying notes to financial statements.

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Statement of Changes in Partners' Capital
Year ended September 30, 2024

	General partner	Limited partner	Total
Balance at October 1, 2023	$ 4,017,949	$ 114,826,641	$ 118,844,590
Performance fees - unrealized	(39,373)	(3,897,974)	(3,937,347)
Net investment income (loss)	7,637	(1,743,929)	(1,736,292)
Net unrealized loss on investments	(551,621)	(54,610,511)	(55,162,132)
Allocation of carried interest	(1,972,009)	1,972,009	—
Balance at September 30, 2024	$ 1,462,583	$ 56,546,236	$ 58,008,819

See accompanying notes to financial statements.

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Statement of Cash Flows
Year ended September 30, 2024

Cash flows from operating activities:		
Net decrease in partners' capital from operations	$	(60,835,771)
Adjustments to reconcile net decrease in partners' capital from operations to net cash used by operating activities:		
Net unrealized loss on investments		55,162,132
Capitalization of interest on convertible notes		(504,195)
Changes in operating assets and liabilities:		
Decrease in related party payable		(163,988)
Increase in performance fee liability		3,937,347
Net cash used by operating activities		(2,404,475)
Net decrease in cash		(2,404,475)
Cash, beginning of year		12,882,910
Cash, end of year	$	10,478,435
Supplemental disclosure of non-cash information:		
Interest income from convertible notes	$	504,195
Supplemental disclosure of cash flow information:		
Interest received from cash accounts	$	601,417

See accompanying notes to financial statements.

MEDICI VENTURES, L.P.
(A Delaware Limited Partnership)
Notes to Financial Statements
September 30, 2024

(1) Organization

Medici Ventures, L.P. (the "Partnership"), a Delaware limited partnership, commenced operations on April 23, 2021, under the laws of the State of Delaware. The Partnership is managed by Pelion MV GP, L.L.C. (the "General Partner"). The Partnership will continue until April 23, 2029, unless terminated earlier or extended under the terms of the Partnership's Limited Partnership Agreement. The Limited Partnership Agreement was executed on April 23, 2021 (the "Formation Date"). The First Amendment to the agreement was executed on August 30, 2021, and a Clarifying Letter was executed on February 1, 2023 (with the agreement, the amendment, and the related Clarifying Letter hereinafter referred to as the "Agreement").

The Partnership was previously a corporation, Medici Ventures, Inc., that was wholly owned by Overstock.com, Inc., and held several investments in blockchain-focused companies working to introduce blockchain technology to various industries, including identity, land governance, money and banking, capital markets, supply chain, agriculture, and voting. On the Formation Date, Overstock, Inc., entered into an agreement with the General Partner to convert Medici Ventures, Inc. into a limited partnership with Overstock.com, Inc., which is now Beyond, Inc. (the "Limited Partner") being the sole limited partner of the Partnership and to transfer a 1% partnership interest to the General Partner of the Partnership (the "Transaction"). Beyond, Inc. continues to maintain a 99% partnership interest as the Limited Partner.

The Transaction resulted in a change in control event as the sole authority and responsibility regarding the Partnership's investment decisions and rights the Partnership holds in the portfolio companies were transferred to the General Partner. Therefore, although the Partnership was converted from a previously existing corporation, the Partnership is being treated for financial accounting purposes as having commenced operations as a new investment company beginning April 23, 2021.

The General Partner is responsible for the management and operation of the Partnership and the formulation of investment policy. The Partnership's primary purpose is to act as a venture capital fund to provide the partners with the opportunity to realize significant long-term capital appreciation from holdings in the current portfolio and other portfolio companies acquired. The general purpose of the Partnership is to buy, sell, hold, and otherwise invest in securities of every kind and nature and rights and options with respect thereto, including, without limitation, stock, notes, bonds, and debentures; to exercise all rights, powers, privileges, and other incidents of ownership or possession with respect to securities held or owned by the Partnership; to enter into, make, and perform all contracts and other undertakings; to advance and promote blockchain technology; and to engage in all activities and transactions as may be necessary, advisable, or desirable to carry out the foregoing.

The Agreement limits the sale of Group A and Group B portfolio companies, as defined in the Agreement, for three and two years after the Partnership's Formation Date, respectively. The Agreement limits the Performance Fee and carried interest allocation paid to the General Partner if the portfolio companies are sold within the restricted time period. The restricted time period for the Group B portfolio companies ended on April 23, 2023, and the Group A portfolio company restricted time period ended on April 23, 2024.

(2) Summary of Significant Accounting Policies

(a) Basis of Presentation

The accompanying financial statements are presented in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"). The Partnership considered investment companies under U.S. GAAP and follow the accounting and reporting guidance applicable to investment companies in the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 946, Financial Services – Investment Companies ("ASC 946"). The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes.

(b) Use of Estimates

The preparation of financial statements in conformity with the U.S. generally accepted accounting principles requires the General Partner to make estimates and assumptions in determining the reported amounts of assets and liabilities, including the fair value of investments at the date of the financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

(c) Investment Valuation

The Partnership determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Partnership's market assumptions. These two types of inputs create the following hierarchy:

- Level 1 - quoted prices in active markets for identical securities
- Level 2 - other significant observable inputs (including quoted prices for similar securities, interest rates, credit risk, etc.)
- Level 3 - significant unobservable inputs (including the Partnership's own assumptions in determining the fair value of investments)

The availability of valuation techniques and observable inputs can vary from investment to investment and are affected by a wide variety of factors, including the type of investment, whether the investment is new and not yet established in the marketplace, the liquidity of markets, and other characteristics particular to the transaction. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, determining fair value requires more judgment. Because of the inherent uncertainty of valuation, estimated values may be materially higher or lower than the values that would have been used had a ready market for the investments existed. Therefore, the degree of judgment exercised by the Partnership in determining fair value is greatest for investments categorized in Level 3.

In some circumstances, the inputs used to measure fair value might be categorized within different levels of the fair value hierarchy. In those instances, the fair value measurement is categorized in its entirety in the fair value hierarchy based on the lowest level input that is significant to the fair value measurement.

Fair value – Valuation techniques and inputs

When determining fair value, the Partnership uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. The Partnership generally uses the market approach to value equity and debt investments in private operating companies. The market approach includes valuation techniques that use prices and other relevant information generated by market transactions involving identical or comparable assets, liabilities, or a group of assets and liabilities.

The market approach includes valuation techniques that use observable market data (e.g., current trading and/or acquisition multiples) of comparable companies and applying the data to key financial metrics of the investment. The comparability (as measured by size, growth profile, and geographic concentration, among other factors) of the identified set of comparable companies to the investment is considered in applying the market approach.

Marketable equity securities: The Partnership values equity securities traded on a national securities exchange at their last reported sales price.

Private operating companies

Investments in private operating companies may consist of common stock, preferred stock, and debt of privately owned portfolio companies. The transaction price, excluding transaction costs, is typically the Partnership's best estimate of fair value at acquisition. At each subsequent measurement date, the Partnership reviews the valuation of each investment and records adjustments as necessary to reflect the expected exit value of the investment under current market conditions. Ongoing reviews by the Partnership's management are based on an assessment of the type of investment, the stage in the lifecycle of the portfolio company, and trends in the performance and credit profile of each portfolio company as of the measurement date.

The Partnership uses an independent valuation service firm to value certain private operating companies. In certain instances, the Partnership may use multiple valuation approaches for a particular investment and estimate its fair value based on a weighted average or a selected outcome within a range of multiple valuation results. The decision to use a valuation approach will depend on the investment type and the information available. When applying valuation techniques used to determine fair value, the Partnership assumes a reasonable period of time for estimating cash flows and considers the financial condition and operating results of the portfolio company, the nature of the investment, restrictions on marketability, market conditions, foreign currency exposures, and other factors. When determining the fair value of investments, the Partnership exercises significant judgment and uses the best information available as of the measurement date. Due to the inherent uncertainty of valuations, the fair values reflected in the financial statements as of the measurement date may differ from (1) values that would have been used had a readily available market existed for those investments and (2) the values that may ultimately be realized.

Inputs used under a market approach may include recent transactions and valuation multiples applied to corresponding performance metrics, such as earnings before interest, taxes, depreciation, amortization (EBITDA), revenue, or net forecasted earnings. The selected valuation multiples were estimated through a comparative analysis of the performance and characteristics of each investment within a range of comparable companies or transactions in the observable marketplace. In addition, recent merger and acquisition transactions of comparable companies may be used as a basis to develop implied valuation multiples. Investment valuations using the market approach may also consider the portfolio company's liquidity, credit, and market risk factors.

The option pricing model, which could be used to allocate the enterprise value of a portfolio company at each share class level, if necessary, treats a portfolio company's common stock and preferred stock as call options on the equity value of the portfolio company, with exercise or strike prices based on the characteristics of each series or class of equity in the portfolio company's capital structure (e.g., the liquidation preference of a given series of preferred stock). This method is sensitive to certain key assumptions, such as volatility and time to exit, that are not observable.

(d) Cash

Cash consists of cash held in a preferred deposit for business and checking accounts. The Partnership maintains a portion of its cash in FDIC-insured bank deposit accounts which, at times, may exceed federally insured limits. To date, the Partnership has not experienced any losses in such accounts. Based on the size and strength of the banking institutions used, the Partnership does not believe it is exposed to any significant credit risks on cash. There are no cash equivalents on September 30, 2024, nor is any cash subject to restrictions on its use.

(e) Income Taxes

The Partnership does not record a provision for U.S. federal, state, or local income taxes, because partners report their share of the Partnership's income or loss on their income tax returns; accordingly, no provision for income taxes is made in the accompanying financial statements. The tax rules governing the reporting of annual tax information to the partners may not follow the financial accounting policies used in preparing financial statements for the Partnership in accordance with the U.S. generally accepted accounting principles.

The authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is reduced by the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The Partnership has determined that there is no tax liability resulting from unrecognized tax benefits related to uncertain income tax positions taken or expected to be taken on the tax return to be filed for the year ending December 31, 2024. The Partnership’s policy is to record penalties and interest as incurred in income tax expense. No income tax returns are currently under examination. The statute of limitations on the Partnership’s state and local tax returns may remain open for an additional year, depending on the jurisdiction.

(f) Interest Income

Investment interest income is recorded on an accrual basis. Accrual of interest ceases when, in the judgment of management, the collectability of such income is not reasonably assured.

(g) Realized Gain (Loss) on Investments and Change in Unrealized Appreciation (Depreciation) on Investments

Realized gains or losses on investments represent the difference between the original cost of the investment and the fair value of the investment at the sale or distribution date. Realized gains or losses on security transactions are determined on the basis of specific identification. The change in unrealized appreciation or depreciation on investments represents the change between the original cost of the investment and the fair value of the investment for the period. Security transactions are accounted for on the date the securities are purchased or sold (trade date).

(3) Fair Value Measurements

The Partnership's assets recorded at fair value have been categorized based on a fair value hierarchy described in the Partnership's significant accounting policies in note 2. The following table presents information about the Partnership's assets measured at fair value as of September 30, 2024:

		Level I	Level II	Level III	Total
Investments, at fair value					
Common stock	$	-	-	32,249,721	32,249,721
Preferred stock		-	-	13,737,506	13,737,506
Convertible notes		-	-	7,972,148	7,972,148
Warrants		-	-	69,380	69,380
SAFE		-	-	1,289,734	1,289,734
Total investments, at fair value	**$**	**-**	**-**	**55,318,489**	**55,318,489**

Changes in Level 3 Measurements

The following table presents changes in assets classified in Level 3 of the fair value hierarchy during the year ended September 30, 2024, attributable to the following:

	Common stock	Preferred stock	Convertible notes	Warrants	SAFE	Total
Interest Income	-	-	504,195	-	-	504,195
Repayments	-	-	-	-	-	-
Conversion	-	-	-	-	-	-
Transfers into Level 3	-	-	-	-	-	-
Transfers out of Level 3	-	-	-	-	-	-
Total Level 3 Changes	**-**	**-**	**504,195**	**-**	**-**	**504,195**

Significant Unobservable Inputs

The following table summarizes the valuation techniques and significant unobservable inputs used for the Partnership's investments that are categorized in Level 3 of the fair value hierarchy as of September 30, 2024.

Investments, at fair value	Fair value at September 30, 2024	Valuation technique	Unobservable inputs	Inputs
Common stock	$ 12,330,513	Market Comparables	Adjusted valuation multiples (revenue)	4.6x
	15,999,208	Option pricing model Market Approach - Recent Transactions	N/A	N/A
Preferred stock	9,237,225	Market Comparables	N/A	1.1x-6.3x
	8,420,281	Option pricing model Market Approach - Recent Transactions	N/A	N/A
Convertible notes	6,404,997	Option pricing model	N/A	N/A
	1,567,151	Market approach - Recent Transactions	N/A	N/A
Warrants	69,380	Transaction backsolve	N/A	N/A
Safe Notes	1,289,734	Market approach - Recent Transactions	N/A	N/A
	$ 55,318,489			

The investments are categorized as Level 3 due to the valuation methodology having significant unobservable inputs, and little or no market activity for the investments. All valuations were performed in accordance with the Partnership's valuation policy, which is in accordance with ASC 820 and reflects management's best judgment of the fair value of the assets. The General Partner values the investments based on the information available at the balance sheet date. While the overall valuation methodologies used in estimating fair values have not changed, the methodologies applied to each investment may change based on market and business events specific to that investment.

(4) Capital Contributions

As of September 30, 2024, the total capital committed to the Partnership was $45,000,000 and of which $450,000 was committed by the General Partner and $44,550,000 by the Limited Partner. A total of $45,000,000 (100%) of capital commitments has been called.

(5) Management Fee

The Management Company of the General Partner is paid an annual management fee for services rendered during the term of the Partnership. The annual management fee is $2,500,000 per year over the first eight years of the term of the Partnership. The annual management fee paid to the Management Company in April 2024 was $2,500,000, of which $1,458,333 is included in prepaid management fees as of September 30, 2024.

The management fee expense for the year ended September 30, 2024, was $2,500,000.

(6) Allocation of Partnership Profit and Loss

All operating expenses of the Partnership, except for Management Fees, are allocated to the Capital Accounts of all the partners in proportion to their respective partnership percentages. Management Fees are allocated to the Capital Account of the Limited Partner.

The restricted sales window for Group A and Group B companies has expired as of September 30, 2024 (see note 1). Allocation of carried interest to the General Partner is defined in the Agreement. For the

Group A companies with estimated fair values above the Threshold NAV, the allocation of hypothetical carried interest to the General Partner is 30% of Excess Proceeds, which are the funds received from the sale of a Group A portfolio company above the Reference NAV, as defined by the Agreement. For the Group A companies with estimated fair values below the Threshold NAV, the allocation of hypothetical carried interest to the General Partner is 15% of Excess Proceeds. For Group B companies with an estimated fair value greater than 400% of the Reference NAV and greater than or equal to $2,000,000, the allocation of hypothetical carried interest to the General Partner is 30% of Cumulative Proceeds. For Group B companies with an estimated fair value of less than 400% of the Reference NAV or less than $2,000,000, the allocation of hypothetical carried interest to the General Partner is 50% of Cumulative Proceeds.

Allocations to the Partnership capital accounts at September 30, 2024, reflect the General Partner's carried interest as if the Partnership had realized the sale of Group A and Group B assets at the fair value reported in the financial statements and assumes a hypothetical allocation and distribution of the net assets to the Partners as of September 30, 2024, consistent with the provisions of the Agreement. At period end, the total allocation of hypothetical carried interest to the General Partner is $954,232. Hypothetical carried interest to the General Partner will remain provisional until assets are realized. The hypothetical carried interest allocation is not a projection of future events, but rather it is a calculation according to accounting guidelines of what the allocation would be if the Partnership were liquidated as of September 30, 2024. Due to the inherent uncertainties of the valuation process and the potential exit scenarios for the Partnership's investments, the estimates of fair value, and therefore the hypothetical allocations of carried interest as of September 30, 2024, may differ significantly from the amounts realized in future periods and those differences could be material.

(7) Distributions

Per the Agreement, proceeds from the sale of a portfolio company are distributed to the General and Limited Partners on a deal-by-deal basis. The Performance Fee related to the sale (see note 8), if any, will first be distributed to the General Partner, and thereafter, the remaining proceeds will be allocated and distributed in accordance with the Agreement.

(8) Performance Fees

Per the Agreement, following the disposition by the Partnership of a portfolio company, the Partnership may pay to the General Partner a Performance Fee in situations where the General Partner's carried interest is less than the Target Performance Entitlement as defined in the Agreement. Depending on the amount of carried interest allocated to the General Partner, the Performance Fee could be a fixed amount or a percentage of the Excess Proceeds or a percentage of the Cumulative Proceeds. Performance Fee expenses are allocated to the Partnership capital accounts based on the respective Partnership percentages.

The sale restriction window for Group A and Group B companies has expired as of September 30, 2024 (see note 1). As of September 30, 2024, the Performance Fee Liability is $9,228,081. The Performance Fee Liability represents an estimated Performance Fee payable to the General Partner for the hypothetical liquidation of Group A and Group B portfolio companies at the fair value reported in the financial statements and assumes a hypothetical allocation and distribution of the net assets to the Partners as of September 30, 2024, consistent with the provisions of the Agreement. This value is not a projection of future events but rather a calculation according to the hypothetical liquidation accounting guidelines.

Any portfolio company that is ultimately shut down due to the inability to obtain adequate financing or to achieve adequate product market fit and provides no exit or liquidation proceeds to the Partnership will not trigger any Performance Fee. Due to the inherent uncertainties of the valuation process and the potential exit scenarios for the Partnership's investments, the estimates of fair value, and therefore the Performance

Fee liability as of September 30, 2024, may differ significantly from the amount realized in future periods and that difference could be material.

(9) Related Party Transactions

The management company of the General Partner pays expenses on behalf of the Partnership, and the Partnership reimburses these expenses, which include legal, accounting, professional, and other general expenses. The amount paid on behalf of the Partnership for the year ended September 30, 2024, was $337,422, of which $18,357 is included in the related party payable at period end.

The management company of the General Partner is paid management fees (note 5).

(10) Financial Highlights

The Limited Partner's ratio of net investment loss to average net assets for the period from October 1, 2023, to September 30, 2024, is approximately -6.34%. The net investment loss is calculated by summing investment and other income, less total expenses, which include management fees. The Limited Partner's ratio of expenses to average net assets for the period from October 1, 2023, to September 30, 2024, is approximately -7.57%. Expenses are the Partnership's expenses, including the management fees.

The Internal Rate of Return (IRR) for the limited partner from inception to September 30, 2024, is -33.90%. The IRR for the previous fiscal year ending September 30, 2023, was -25.39%. The IRR was computed based on the actual dates of the cash inflows (capital contributions), outflows (distributions), and the ending net assets at the end of the period (residual value) of the limited partner's capital account. These may not be indicative of the future performance of the Partnership.

(11) Risk Management

In the ordinary course of business, the Partnership manages a variety of risks, including market risk and liquidity risk. The Partnership seeks to identify and monitor risk through diversification of exposures and activities across a variety of instruments, markets, and counterparties.

Market risk is the risk of potentially adverse changes to the value of financial instruments. The Partnership manages its exposure to market risk through various risk management strategies.

Liquidity risk is the risk that the Partnership may not be able to sell assets when it desires to do so or to realize what it estimates to be its fair value in the event of a sale. The sale of illiquid assets and restricted securities often requires more time and results in higher selling expenses than does the sale of securities eligible for trading on national securities exchanges or on the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to a restriction on resale.

The Partnership has provided general indemnifications to officers, directors, members, employees, and agents of the General Partners, when they act, in good faith, in the best interests of the Partnership. Such indemnifications provided by the Partnership are subordinate to the liability coverage carried by the General Partner and should serve to mitigate any potential liability which may arise at the Partnership level. The Partnership is unable to develop an estimate of the maximum potential amount of future payments that could potentially result from any hypothetical future claim but expects the risk of having to make significant payments under these general business indemnifications to be remote.

(12) Subsequent Events

The Partnership has evaluated subsequent events through December 17, 2024, the date the financial statements were available to be issued, and except for the matters disclosed above, did not note any items that would adjust the financial statements or require disclosure.