ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2016

Bankrate, Inc.

(Exact name of registrant as specified in its charter)

Delaware 65-0423422
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

1675 Broadway, 22nd Floor 10019
New York, NY (Address of principal executive offices) (Zip Code)

Registrant’s telephone number, including area code: (917) 368-8600

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

Common Stock, $0.01 Par Value New York Stock Exchange

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

Indicate by check mark whether 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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☑
Non-accelerated filer ☐ (Do not check if a smaller reporting company)
Smaller reporting company ☐

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

The aggregate market value of the registrant’s outstanding common stock held by non-affiliates of the registrant computed by reference to the price at which the common stock was last sold as of the last business day of the registrant’s most recently completed second fiscal quarter was $341,615,552 (based on a closing price of $7.48 per share for the registrant’s common stock on the New York Stock Exchange on June 30, 2016).

The number of outstanding shares of the issuer’s common stock as of February 28, 2017 was as follows: 89,915,676 shares of Common Stock, $0.01 par value.
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CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains “forward-looking statements” which involve risks and uncertainties. You can identify forward-looking statements because they contain words such as “believes,” “expects,” “may,” “should,” “seeks,” “approximately,” “intends,” “plans,” “estimates,” or “anticipates” or similar expressions that relate to our strategy, plans or intentions. All statements we make relating to our estimated and projected earnings, margins, revenues, costs, expenditures, cash flows, growth rates, strategy and financial results or to our expectations regarding future industry trends and competitive dynamics or regarding resolution of litigation or governmental matters described in this Annual Report on Form 10-K are forward-looking statements. In addition, we, through our senior management, from time to time make forward-looking public statements concerning our expected future operations and performance and other developments. These forward-looking statements are subject to risks and uncertainties that may change at any time, and, therefore, our actual results may differ materially from those that we expected. We derive many of our forward-looking statements from our operating budgets and forecasts, which are based upon certain assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known or unknown factors, and it is impossible for us to anticipate all factors that could affect our actual results. All forward-looking statements are based upon information available to us on, and speak only as of, the date of this report.

Important factors that could cause actual results to differ materially from our expectations, which we refer to as cautionary statements, are discussed in detail in Part I, Item 1A. “Risk Factors” in this Annual Report on Form 10-K. All forward-looking information in this Annual Report on Form 10-K and subsequent written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements. Some of the factors that we believe could affect our results include without limitation:

- the willingness or interest of credit card issuers, banks, lenders, brokers, senior care providers and other advertisers in the business verticals in which we operate to advertise on our websites or mobile applications, or purchase our leads, clicks, calls and referrals;
- changes in application approval rates by our credit card issuer customers;
- increased competition and its effect on our website traffic, click-through rates, advertising rates, margins, and market share;
- our dependence on internet search engines to attract a significant portion of the visitors to our websites and our ability to diversify the sources from which we obtain visitor traffic to our websites and mobile applications, including without limitation through use of social media channels;
- changes in the way that search engines display paid and organic search results and the impact of those changes on the number of consumers that visit our online network;
- the cost of driving consumers to our online network, including without limitation our ability to generate traffic profitably through online and offline marketing channels and branding efforts;
- our dependence on traffic from our partners to produce a significant portion of the Company’s revenue and our ability to establish and maintain distribution arrangements;
- the willingness of consumers to accept the Internet and our online network as a medium for obtaining information on financial products or senior care;
- shift of visitors from desktop to mobile and mobile app environments;
- the rate of conversion of consumers’ visits to our websites or mobile applications into senior care referrals and the rate at which those referrals result in move-ins with our senior care customers;
- the number of consumers seeking information about the financial and senior care products we have on our websites or mobile applications;
- our ability to successfully execute on our strategies, and the effectiveness of our strategies and investments in our business, including without limitation whether they result in increased revenue or profitability;
- risks relating to the defense or litigation of lawsuits;
- the timing and outcome of, including potential expense associated with, and the potential impact on our business and stock price of any announcements regarding, the United States Department of Justice (“DOJ”) investigation;
- the timing and outcome of, including potential expense associated with, and the potential impact on our business and stock price of any announcements regarding, the Consumer Financial Protection Bureau (“CFPB”) investigation;
- the costs of indemnification obligations to current and former directors, officers and employees;
- any delay or failure to collect the deferred portion of the purchase price due to us in connection with the sale of the Company’s Insurance business in December 2015;
- our ability to anticipate and manage cybersecurity risk and data security risk and to mitigate or resolve issues that may arise;
- the effects of any security breach, data breach or cyberattack on our systems, websites or mobile applications, or on our reputation, and the impact of any notification costs or other liability arising from any security breach, data breach or cyberattack on our business;
- technological changes and our ability to adapt to new or evolving technologies that affect our business environment or operations;
- the material weakness in our internal controls over financial reporting and our ability to rectify this issue completely and promptly;
- our ability to otherwise maintain effective disclosure controls and procedures and internal control over financial reporting;
• our ability to manage traffic on our websites or mobile applications, and service interruptions;
• our indebtedness and the effect such indebtedness may have on our business;
• our need and our ability to obtain additional debt or equity financing;
• our ability to integrate the operations and realize the expected benefits of businesses that we have acquired, including without limitation the NextAdvisor business, and businesses we may acquire in the future;
• the effect of unexpected liabilities we assume (whether intentional or not) from our acquisitions;
• our ability to attract and retain executive officers and personnel;
• any failure or refusal by our insurance providers to provide coverage under our insurance policies;
• our ability to protect our intellectual property;
• the effects of potential liability for content on our websites or mobile applications;
• the effect of our operations in the United Kingdom and possible expansion to other international markets, in which we may have limited experience, and our ability to successfully execute on our business strategies in international markets;
• risks associated with the wind down of our operations in China;
• the strength of the U.S. economy in general and the financial services industry in particular;
• changes in monetary and fiscal policies of the U.S. government and interest rate volatility;
• review of our business and operations by regulatory or other governmental authorities;
• changes in laws and regulations or interpretations of laws and regulations, other changes in the legal and regulatory environment, and the impact of such changes on the operation of our business;
• any further impairment to our goodwill and/or intangible assets, including without limitation further impairment of the goodwill of our Banking or Senior Care reporting units;
• changes in accounting principles, policies, practices or guidelines; and
• our ability to manage the risks involved in the foregoing.

We caution you that the foregoing list of important factors may not contain all of the material factors that are important to you. In addition, in light of these risks and uncertainties, the matters referred to in the forward-looking statements contained in this Annual Report on Form 10-K may not in fact occur. Accordingly, investors should not place undue reliance on those statements. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.
PART I.

Item 1. Business

Overview

Bankrate, Inc. and its subsidiaries (“Bankrate” or the “Company,” “we,” “us,” “our”) aggregate large scale audiences of in-market consumers by providing them with proprietary, fully researched, comprehensive, independent and objective personal finance and senior care editorial content across multiple verticals including credit cards, mortgages, deposits, senior care and other categories, such as retirement, automobile loans, credit management techniques and taxes. Our comprehensive content offering and product research has positioned us as a recognized personal finance and senior care authority for consumers. Top media outlets, such as The Wall Street Journal, Associated Press, CNBC, USA Today and Forbes, regularly turn to us for our proprietary data or as an expert source for their audience. Our flagship websites CreditCards.com, Bankrate.com and Caring.com are leading vertical content destinations in each of their respective categories and connect our audience with financial service and senior care providers and contextually relevant advertisers. We also own and operate a number of specialist sites, blogs, apps and social platforms, including The Points Guy, NextAdvisor.com, MillionMileSecrets.com, Interest.com, Quizlet.com, Walla.by and SeniorHomes.com. In addition, we distribute our content on a daily basis to over 100 online partners and print publications, including some of the most recognized brands in the United States.

Our business benefits from the secular shift toward consumers researching and shopping for personal finance products online. The Internet’s unique aggregation capabilities allow consumers to access and research vast amounts of information to efficiently compare prices and enable an informed purchase decision. We believe this is driving consumers to increasingly research and engage online for personal finance products and shift away from more traditional buying patterns. We stand to benefit from this major secular shift as a result of our leading position online in the personal financial services markets driven by our strong brands, proprietary and aggregated content, breadth and depth of personal finance products, broad distribution, leading position in algorithmic search results, and paid marketing and monetization capabilities.

Founded as a financial and market data research business, Bankrate began moving from print-based to online in 1996. We have strategically broadened and diversified our product, content and consumer offerings through internal development activities and acquisitions. We now offer:

- branded content that educates consumers and financial professionals on a variety of personal finance topics;
- credit card offers, comparison capabilities and content for consumer and business credit cards in the United States, the United Kingdom and Canada through our leading network of credit card websites;
- a market leading platform for consumers searching for competitive rates on mortgages, deposits, money market accounts and other personal finance categories;
- helpful caregiving content, a comprehensive online senior living community directory for the United States, a local directory covering a wide array of other senior caregiving services, and telephone support and advice from trained Family Advisors to consumers looking for senior care options; and
- personal financial service offerings including credit monitoring.

Our unique content and rate information is distributed through two main sources: through our owned and operated websites and online co-brands, and through our partners. We own a network of content-rich, proprietary websites focused on specific vertical categories, including credit cards, mortgages, deposits, senior care and other personal finance categories. We also develop and provide content, tools, web services and co-branded websites to approximately 100 online partners, including some of the most trusted and frequently visited personal finance sites on the Internet including Bloomberg, Kiplinger, MarketWatch, TheStreet.com and Yahoo!.

Our primary sources of revenue are consumer credit card accounts, consumer inquiries and senior care community residents that we deliver to our financial service and senior care provider customers, and display advertising. During the year ended December 31, 2016, we generated revenue of $343.2 million, net loss from continuing operations of $234 million, Adjusted EBITDA of $114.8 million and cash flow provided by operating activities of $79.8 million. During the year ended December 31, 2015, we generated revenue of $372 million, net income from continuing operations of $16.8 million, Adjusted EBITDA of $127.1 million, and cash flow provided by operating activities of $86 million. Financial results for all periods presented have been adjusted for the reclassification of the results of our China operations from a discontinued operation to continuing operations as we initiated the process of winding down our operations in China after negotiations with potential buyers did not result in a transaction. See “Selected Financial Data” for a reconciliation of Adjusted EBITDA to net income.

Segments

Our business is organized into the following reportable segments:

- **Credit Cards** – we present visitors with a comprehensive selection of consumer and business credit and prepaid cards, providing detailed information and comparison capabilities, and host news and advice on personal finance and on credit card and bank policies, as well as tools, calculators, products and services to estimate credit scores and card benefits, provide identity theft protection and credit monitoring.
- **Banking** – we offer information on rates for various types of mortgages, home lending and refinancing options, specific to geographic location and covering all 50 states, and personal and auto loans; rate information on various deposit products such as money markets, savings and certificates of deposits; and information on retirement, taxes and debt management. This segment also provides original articles on topics related to the housing market and loan refinancing; provides online analytic tools and services to calculate investment values, provide home loan estimates and recommendations, budget planning and credit reports and monitoring; and provides content on topics such as retirement 401(k) accounts, Social Security, tax deductions and exemptions, auto loans, debt consolidation and management and credit risk and credit management techniques.
Senior Care – we offer visitors information on a variety of senior care services and support as they care for aging parents and loved ones. We provide thousands of original articles, helpful tools, a comprehensive online senior living community directory for the United States and a local directory covering a wide array of other senior caregiving services.

Other – includes unallocated corporate overhead, the elimination of transactions between segments and the wind down of our China operations.

For financial information about our reportable segments for the years ended December 31, 2016, 2015 and 2014, see Item 7 – Management’s Discussion and Analysis of Financial Conditions and Results of Operations, and Item 8, Note 6 – Segment Information, Geographic Data and Concentrations.

Company Developments

Acquisitions

The Company has grown significantly in size and scope of offerings via acquisitions. In 2014 we acquired Caring, Inc. (“Caring”), which provides editorial content on senior living and trained senior living advisors and provides us access to the fast growing senior care market. In 2015 we acquired (i) SeniorHomes.com, which complements our Senior Care business and increases our penetration into the senior care market; (ii) Quizzle, LLC (“Quizzle”), which operated Quizzle.com and is now integrated into our Banking segment, complementing our financial services offerings with a national free credit report and monitoring site that provides users with free credit scores and credit reports, as well as offering credit monitoring and identity protection services; and (iii) certain assets of LoanTek, Inc., (“LoanTek”), which complements the financial service offerings in our Banking segment with subscription based mortgage software solutions, including pricing engines, offered to mortgage companies and other loan originators. In 2016 we acquired certain assets of Next Advisor, Inc. (the “Acquired NextAdvisor Business”), an online source of research and reviews of credit cards, personal finance and internet services. The objective of this acquisition was to accelerate growth in our credit cards business, broadening our reach and increasing the number of ways we engage consumers looking for credit cards.

In each case these acquisitions enabled us to strengthen our offering to providers seeking high quality leads and new consumers who are looking for a comprehensive suite of financial and senior care services. These acquisitions have strengthened our position through increased selection of products and increased scale of our audience resulting in greater appeal to personal financial services partners.

Divestiture

In 2015, we sold our Insurance business, including NetQuote Holdings, Inc. and its subsidiaries (“NetQuote”), which we had acquired in 2010, along with other assets used in the operation of the Insurance business for a price comprised of (i) $140.0 million in cash paid to us at closing, plus $200,000 for cash to remain at the Insurance business companies, and (ii) $23.1 million to be paid to us on the second anniversary of the closing date.

Secondary Offering

In 2014, the Company completed a secondary offering (the “Offering”) of 16,100,000 shares of common stock (the “Shares”) owned by Ben Holding S.à r.l. (an entity wholly owned by Apax VII Funds which are advised by Apax Partners L.P. and Apax Partners LLP). The Company did not receive any of the proceeds from the Offering. The Offering was made pursuant to the Company’s shelf registration statement on Form S-3, filed with the SEC on February 27, 2014, and related prospectus supplement dated March 4, 2014.

Industry

The Internet has evolved into one of the most effective and comprehensive sources for personal finance content. Traditionally, consumers used sources of information such as word-of-mouth, referrals, newspapers and mortgage guides to research and address their financial needs. However, these approaches are often time consuming, error prone, and not transparent. Widespread access to the Internet and availability of content and the benefits associated with shopping and researching online has allowed consumers to increasingly rely on the Internet for their financial shopping needs. Using the Internet, consumers can search for and compare financial products and services across multiple sites and choose the right alternative for them.

Companies continue to expand their online marketing efforts to reach this large and growing online audience cost-effectively. As website traffic grows, online advertising continues to grow as a share of overall advertising. In a 2015 study, eMarketer noted that U.S. internet advertising continues to be the fastest growing advertising medium with forecasted annual growth of 17% from 2014 to 2019. eMarketer also estimated that internet advertising will increase its share of the U.S. advertising market from 31.6% in 2015 to 41.1% in 2019. Additionally, eMarketer forecast an annual average growth rate of 13% for U.S. internet advertising for financial services from 2014 to 2019. The main driver of U.S. and global advertising spend growth is mobile and it is estimated that mobile will contribute 87% of all new global ad spend between 2015 and 2018. We believe our business will continue to benefit as the percentage of advertising dollars spent online increases to reflect the greater amount of media consumed online.

Our Solution

We provide consumers and institutions with a comprehensive personal finance marketplace through our leading content-rich flagship websites: CreditCards.com, Bankrate.com, Caring.com, and our other branded personal finance destination websites. We allow consumers to shop for a wide variety of financial products and services online, including credit cards, mortgages, deposit accounts and senior living community options. We offer fully researched, independent and objective financial content to our in-market visitor base. We understand the importance of critical financial decisions and have designed our solutions to provide relevant information, content and advice to consumers to help them make the right decisions more efficiently and conveniently. We provide information, options and support for consumers as they cope with the emotional stress and importance of decisions related to finding care for aging parents and loved ones. Our brands and the scale and quality of our content have helped us attract increasing numbers of in-market consumers over the years. As more consumers visited and researched personal finance products on our websites, more financial institutions listed their products and services with us. The combination of an increasing amount of consumers seeking personal finance products online and more companies providing products and services online increases the quality, depth and breadth of our offerings and attracts even more consumers, advertisers and institutions as a result. Additionally, the prominence of our brands, the quality of our content, the engineering architecture and interface of our sites, and other factors that drive relevance have generally resulted in prominent placement in financial services search results from the leading search engines. This increased distribution via search provides additional traffic to our websites, again further attracting more partners and resulting in increased selection of personal finance products and more content. This virtuous cycle has enabled us to reinforce
our leadership position and achieve a loyal advertiser and consumer base.

Our Strengths

Market Leader for Personal Finance Content. We are a leading publisher, aggregator and distributor of personal finance content on the Internet. We believe our leadership position will continue to enable us to take advantage of the secular shift to the Internet as a source of personal finance solutions, including a broad range of personal finance services products across numerous verticals including credit cards, mortgages, deposits, senior care and other personal finance categories, including retirement, automobile loans, credit reports, credit scores, budget planning and taxes, and a great depth of selection in each category. Our selection both across and within these categories is a key differentiator in the value proposition to consumers.

Leading Consumer Brands. We have built strong, recognizable and highly trusted brands over our long history. We believe this is an important competitive differentiator. Furthermore, the strength of our brands has permitted us to be a partner of choice for other leading personal finance content providers and other general interest publishers.

High Quality, Proprietary Content. Driving Consistent Leadership in Search Results. We provide consumers with proprietary, researched, independent and objective personal finance content, data and tools. Our editorial staff consists of editors, reporters, expert columnists and freelancers delivering “best in class” content and providing news and advice through hundreds of new articles per month on top of approximately 53,000 stories in our database. We actively list approximately 200 credit card offers on our websites and have a robust, proprietary card repository of over 3,300 products. We aggregate rate information from institutions for more than 300 financial products in more than 600 local markets. Our senior care directory has information regarding more than 20,000 senior housing facilities including over 7,000 to which we can refer consumers.

Diversified Traffic Sources. Our leadership in search results is complemented by our expertise in paid marketing. We generate traffic from a variety of paid marketing channels including search engine marketing, display advertising and content marketing. Paid marketing represents a growing share of our traffic, and has diversified the sources of traffic to our owned and operated sites. We also advertise our CreditCards.com site through traditional media (e.g., television).

Long-term Relationships with Leading Financial Institutions. We have long-term relationships with the leading institutions in our markets. We have relationships that are on average over 15 years old for our largest five customers. Financial institutions typically pay us only when in-market customers are approved for one of their credit cards, specifically express interest in their bank offerings or place a new resident in one of their facilities. Moreover, for much of our revenue these financial institutions effectively set the pricing via their participation in an auction process. This business model design allows financial institutions to set their spending to drive profitability.

Superior Distribution Platforms. Our unique content and rate information is distributed through two main sources: our owned and operated websites, and through partners and affiliates. This distribution network enables us to drive large amounts of high quality traffic to our network while increasing our brand awareness in a cost-effective way.

Consistent, Strong Cash Flow. Alignment with our customers goals, combined with a highly scalable infrastructure, has resulted in strong cash flow. Our cash flow from operations was $79.8 million, $86.0 million and $42.5 million in our 2016, 2015 and 2014 fiscal years, respectively.

Strong, Experienced Management Team. Our management team has an in-depth understanding of the online media and personal finance industries as well as extensive experience growing companies’ profitability, both organically and through acquisitions.

Our Growth Strategy

We believe that the personal finance sector contains significant opportunities for growth. Elements of our strategy include:

Maintaining Leadership as a Trusted and Authoritative Source for Personal Finance Content and Information about Senior Care. We are focused on maintaining our position as a leading destination platform for personal finance information. We intend to continuously enhance the consumer experience and engagement on our websites to help us maintain this leadership position. One of the primary ways that we seek to differentiate ourselves is through the quality, breadth and depth of our financial content and data. As consumers increase their usage of the Internet as a tool for personal finance needs, we intend to maintain and improve our position in online comparative research for credit cards, mortgages, deposit products, senior care and potentially in additional personal finance markets.

Increasing Traffic to Our Network. We believe our unique and differentiated content offering, the strength of our brands and our marketing efforts will allow us to drive substantial traffic to our online network. We intend to continue to focus on efforts that explicitly drive traffic to our online network including providing highly relevant search results, public relations, social media efforts, paid search efforts, increasing the size of our co-brand partner network and print partnerships. In 2017 and beyond, we anticipate increasing the investment in our CreditCards.com brand through offline marketing.

Continuing to Increase Monetization of Our Traffic. By advertising on our online network, credit card issuers, banks, brokers, senior care communities and other advertisers are accessing targeted, quality consumers. By allowing advertisers to efficiently access these “in-market” consumers, we are ultimately creating a transaction that is beneficial for the advertiser, the consumer and us. As we continue to improve customer engagement and drive traffic to our online network to reach a greater number of users, we expect to strengthen our relationships with existing advertisers and build new relationships with potential advertisers. We intend to continuously enhance our product offering and targeting capabilities to advertisers to ensure we are increasing our monetization of content and traffic.

Establish an Ongoing and Personalized Relationship with Our Audience. By providing tools and services such as free credit reporting and transaction monitoring, in addition to personalized offers that anticipate consumers’ individual needs, we believe we can build a meaningful base of consumers who have an ongoing relationship with one or more of our flagship sites. We believe we will benefit from connecting these consumers with products and providers they are interested in, without the cost of “re-acquiring” the customer for each transaction.

Developing New Products that Increase the Quality of Our Offering to Consumers, Advertisers and Partners. By enhancing and expanding our product set, we seek to maintain our industry leadership. The key goals of all of our product development efforts are to satisfy consumers, drive traffic, increase monetization and increase affiliate and partner opportunities. Examples of some areas that our product development teams are currently focused on include using advanced analytics and data testing to enhance site infrastructure for ongoing optimization and improving site design for increased engagement, creating new tools to enhance offerings of our affiliates and partners’ apps and mobile platforms, initiatives to enhance the end-to-end mobile experience and, as referenced above, initiatives to broaden our consumer relationships from being transaction oriented to an ongoing relationship anticipating consumer needs.

Pursuing Additional Strategic Acquisitions. Acquiring businesses continues to be a strategic focus for us. We believe our industry
relationships allow us to identify specialized companies that are attractive acquisition candidates. We intend to continue to pursue strategic growth opportunities that complement our online network to cost-effectively gain market share and strengthen our content portfolio.

Our Products and Services

Consumers
As a leading provider of personal finance content, we offer our consumers deep and broad information, analytics and advice across multiple categories of personal finance including: (i) credit cards, (ii) deposits, (iii) mortgages and home lending, (iv) senior care, and (v) other financial products, including those related to retirement, tax, autos, credit scores and reports and debt management.

We aggregate rate information from institutions for more than 300 financial products in more than 600 local markets in all 50 states. In addition, we offer customizable search and compare capabilities, as well as analytic tools to calculate value and costs. We believe our comprehensive marketplace of real-time, easily accessible, and relevant information equips consumers with the right tools to make informed personal finance decisions.

We operate a select group of content-rich, branded destination websites including, but not limited to, CreditCards.com, Bankrate.com and Caring.com.

- **Credit Cards.** We present a comprehensive selection of consumer and business credit and prepaid cards. We provide detailed credit card information and comparison capabilities, as well as relevant personal finance and credit card content, and allow consumers to search for cards that cater to their specific needs. We display cards by various attributes including by bank or issuer, card network, credit quality, and type of card, such as reward, cash back or low interest.

- **Mortgages and Home Lending.** We offer information on rates for various types of mortgages, home lending and refinancing. We maintain current rate information for more than 600 local markets, covering all 50 U.S. states. Consumers can customize searches for mortgage rates by loan size, type, maturity, and location through our online portals. We also provide calculators and original editorial content that cover topics such as trends in housing markets and refinancing perspectives to help consumers with their decision making.

- **Deposits.** We offer rate information on various deposit products such as money market accounts, savings accounts and certificates of deposit. We also provide online analytical tools to help consumers calculate investment value using customized inputs.

- **Personal Loans.** We present a selection of personal loan products, along with information that assists consumers in understanding this product category.

- **Senior Care.** We provide helpful caregiving content, a comprehensive online senior living community directory for the United States, a local directory covering a wide array of other senior caregiving services, and telephone support and advice from trained Family Advisors.

- **Other Personal Finance Products.** Relevant content is provided on topics including retirement 401(k) accounts, Social Security, tax deductions and exemptions, auto loans, debt consolidation and management and credit risk and credit management techniques.

Advertisers
We believe advertisers appreciate our value proposition as one of the leading personal finance content providers. Our relevant and proprietary content attracts consumers who are actively searching for personal finance products, allowing advertisers to effectively reach their target customer base. Our trusted reputation as an objective provider of reliable information further drives traffic and establishes a credible platform for advertisers to list their offers. We also offer advertisers an attractive path to access high quality consumer inquiries, all of which have resulted in the continued growth of our advertiser relationships.

We provide consumer inquiries in the credit card, banking and senior care verticals. In credit cards, consumer inquiries are a click or phone call to our advertisers; in banking, consumer inquiries are delivered in the form of clicks and calls; and in senior care, consumer inquiries are qualified contacts delivered through our call center.

Our leading credit card comparison marketplace is one of the largest third party online consumer inquiry and application sources for major credit card issuers. We primarily earn and recognize revenue after a consumer has: (i) clicked on and through a card offer on one of our or our partners’ websites, (ii) completed an application at the card issuers’ site and (iii) received approval on the card application.

In our banking vertical, advertisers that are listed in our rate tables have the opportunity to hyperlink their listings and provide a phone number. By clicking on the hyperlink, users are taken to the advertiser’s website. We typically charge our advertisers per delivered consumer inquiry. Under this arrangement, advertisers pay Bankrate each time a consumer clicks on that advertiser’s hyperlink or calls the phone number. All clicks and calls are screened for fraudulent characteristics by an independent third party vendor and the filtered clicks and calls are then charged to the customer’s account.

In the senior care vertical, we deliver consumer inquiries to contracting senior living communities. After qualifying the inquiries through our call center and referring them to a number of participating senior living communities, we earn a referral fee for a consumer who moves in. We also deliver consumer leads to contracting in-home care providers, for which we receive fees on a per-lead basis.

In the banking and senior care verticals, we also charge for a variety of digital ad display formats. Our most common digital display advertisement sizes are leader boards and flex units, which are prominently displayed at the top, bottom or sides of a page. We charge for these advertisements based on the number of times the advertisement is displayed or based on a fixed amount for a campaign. Advertising rates may vary depending upon the product areas targeted, geo-targeting, the quantity of advertisements purchased by an advertiser, and the length of time an advertiser runs an advertisement on our online network. We sell to advertisers targeting a specific audience in a city or state and also to national advertisers targeting the entire country.

Sales Strategy
We have sales teams that are dedicated to specific vertical categories and customer groups, giving them greater expertise in designing solutions for our advertisers, and also have sales personnel serving our national, regional and local advertising customers. For example we
have separate sales teams trained and dedicated to serving credit card issuers, local, regional and national banks, local mortgage companies and senior living chains and independent senior living communities.

Our selling strategy focuses on leveraging our core strengths in a flexible manner to respond to our customers’ specific requirements. For example, in collaborating with a large branded bank, we may feature a branded cost-per-thousand-impressions-based display campaign if the advertiser plans to compete primarily on brand and visibility on our sites. A different advertiser may be focused on competing directly on the basis of superior rates and therefore a rate table cost-per-click or cost-per-call approach may be more beneficial than a cost-per-impression model. Other advertisers may be interested in maximizing conversion and achieving a specific return on investment, and given the conversion rates of our traffic, a per-action or per-click solution may be the most appropriate in such a case. This array of advertising options and ability to tailor a campaign to our advertisers’ needs results in more revenue for us, better information for our consumers and superior consumer traffic and conversions for our customers. We have the capability to execute on this selling strategy not only because of our wide variety of product monetization options (per-thousand-impressions, per-click, per-call, per-action and per-move-in), but also because we have highly developed direct relationships with our customers. We work directly with top branded banks, credit card issuers, mortgage lenders and senior care communities. Our sales teams are very knowledgeable about our advertisers’ products and are viewed as partners by our advertisers, thus allowing for a close and collaborative relationship in which we can offer solutions that satisfy our advertisers’ needs.

We attract our consumer audience by offering comprehensive and objective comparisons based on rates, selection, features, brand, flexibility and other key attributes, as well as content to educate our consumers on these matters. Our platform is compelling for our advertisers for several reasons including:

- Historically, Bankrate has delivered a high proportion of consumers who are of the highest credit and financial quality and predominately “Prime” in terms of their personal finance profile.
- Bankrate’s platforms are specific, highly contextual destinations for consumers who are generally in market for a product. Leads and click-throughs therefore have a high conversion rate for our advertisers.
- Bankrate’s platforms are leading generators of highly targeted contextual consumer traffic seeking credit cards, mortgage, deposit and senior care products and therefore we have provided a constant and reliable flow of prospects for our advertisers.

Marketing

Bankrate has been able to establish itself as one of the most recognized brands in the online personal finance market. The strength of our brands lead to many of our visitors coming to our websites by directly typing our Internet addresses. Another critical factor in attracting visitors to our websites is how prominently we are displayed in response to search queries regarding vertical categories in which we operate. 

For our Bankrate.com site, traffic in 2016 was also driven through approximately 100 online partners, including Bloomberg, Kiplinger, MarketWatch, TheStreet.com and Yahoo! Our partners place our content and rate tables on co-branded pages within their sites and we sell the advertisements on these pages and share the advertising revenues with the partner. We benefit from these relationships as these pages are exposed to traffic that would not otherwise be generated from our website.

We also actively conduct media public relations campaigns to promote our editorial content and personnel to the consumer and trade media. Company spokespersons are routinely featured in newspapers, magazines and in broadcast media, and are promoted to and are featured as expert commentators on major broadcast and cable news programs and talk radio. Top media outlets, such as The Wall Street Journal, Associated Press, CNBC, USA Today and Forbes, regularly turn to us for our proprietary data or as an expert source for their audience.

Customers

A significant portion of our customer base by revenue is comprised of large financial institutions such as banks which may have products in multiple vertical categories on our online network. Our largest customers by total revenue generated in the years ended December 31, 2016 and 2015 include Chase, Capital One, American Express, Discover, Bank of America, Citibank and Synchrony Bank. For the year ended December 31, 2016, Chase accounted for approximately 25%, and for the year ended December 31, 2015, Capital One accounted for approximately 20%, of our total revenue across all products. For the years ended December 31, 2016 and 2015, our ten largest customers accounted for approximately 69% and 74%, respectively, of total revenues across all products.

Product Development Strategy

Our product development strategy is designed to expand our advertiser base, traffic origination sources and highly targeted consumer audience, all of which are critical to our success and drive monetization. Key elements of this strategy include:

- enhancing the consumer experience and engagement on our websites and mobile applications;
- increasing traffic to our websites and mobile applications;
- increasing monetization of our traffic and advertiser satisfaction;
- developing products to expand opportunities with partners and affiliates; and
- expanding into new products and features to further enhance our consumer relationships.

Our continuously evolving flagship websites feature a modern modular design enabling us to add features and additional content rapidly, test consumers’ response and engagement and optimize satisfaction as a result. We plan to further enhance our back-end infrastructure, creating an even stronger network for our consumers, advertisers, partners and affiliates. In addition, we have many initiatives underway to create an even more substantial mobile presence.

In fulfilling our product mission, we make extensive use of site tracking and optimization technologies, and we continually monitor and improve consumer engagement and monetization. We believe that our goal-oriented product development strategy and execution, our
rapid incremental iterative process, and our overall discipline have been some of the key components of our success and we believe these will continue to assist us in maintaining our competitive advantage in the future.

**Competition**

We compete for advertising revenues across the broad categories of credit card marketplaces, personal finance content and senior care marketplaces, both in traditional media and online. There are many competitors in our market verticals. Our online and traditional media competition includes the following:

- numerous websites in each of our vertical categories competing for traffic and for advertisers;
- search engines that display their own proprietary content or services in search results that in some cases compete with the content or services in one or more of our vertical categories;
- financial institutions, including credit card issuers, mortgage lenders and deposit institutions, and many of which are also our customers;
- lead aggregators and websites committed to specific personal finance products and senior care services;
- senior care service providers, many of which are also our customers;
- traditional offline personal finance marketing channels, including direct mail, television, radio, call centers, retail bank branches and print; and
- general interest websites that compete for advertising dollars such as Yahoo! and AOL.

Competition in the online publishing business is generally directed at growing users and revenue using marketing and promotion to increase traffic to websites. We believe that we compete favorably within each of the categories described above and that we will be able to maintain and enhance our leadership position.

**Technology**

We currently operate our online network and supporting systems primarily on servers at secure third-party and cloud hosting facilities, including Amazon Web Services and locations across the United States. Most of our critical properties and consumer facing operations operate concurrently from multiple data centers. Multiple data centers are key to our business continuity strategy, providing continuity and recovery options if a data center should suffer a major outage.

These facilities are powered continuously from multiple sources, including uninterruptible power supplies and emergency power generators. The facilities are connected to the Internet with redundant high-speed data lines. The systems at each data center are protected by multi-layered security and switching systems, including redundant routers, firewalls, switches, and load balancers at each data center. To provide maximum scalability, many of our high-traffic web pages are served from multiple active/active data centers through an independent content distribution network. Multi-node clusters and active load balancing systems are used for key functions, including web serving, web services, and many databases. Mission-critical information presented on our websites, including back-end databases that provide the raw information, is stored and delivered via such multi-node or multi-system configurations from one or both of the co-location facilities.

The extensive use of a multi-data center active/active architecture, combined with load balancing at multiple levels, ensures our ability to handle load and scale capacity to match demand.

We also leverage third party content distribution networks, ad serving, optimization, and tracking services to improve performance and provide instrumentation, while leveraging the scalability of major vendors in these arenas.

**Intellectual Property**

Our proprietary intellectual property consists of our unique research and editorial content, computer programs relating to our websites, our website applications and our domain names. We rely primarily on a combination of copyrights, trademarks, trade secret laws, our user policy and restrictions on disclosure to protect this content. In addition, we license some of our data and content from other parties. Our copyrights, trademarks and licenses expire at various dates, and we believe that none is individually significant.

**Regulatory Matters**

We are affected by laws and regulations that apply to businesses in general, as well as to businesses operating on the Internet. This includes a continually expanding and evolving range of laws, regulations and standards that address information security, data protection, privacy, consent and advertising, among other things. To the extent we provide a medium through which users can post content and communicate with one another, we may also be subject to laws governing intellectual property ownership, obscenity, libel, and privacy, among other issues. Advertising and promotional information presented to visitors to our online services, and our other marketing activities, are subject to federal and state consumer protection laws that regulate unfair and deceptive practices. There are laws, regulations and standards that regulate certain aspects of the Internet, including online content, user privacy, taxation, liability for third-party activities and jurisdiction.

These include the Communications Decency Act of 1996, which regulates content of material on the Internet, and the Digital Millennium Copyright Act of 1998, which provides recourse for owners of copyrighted material who believe that their rights under U.S. copyright law have been infringed on the Internet. In the area of data protection, the U.S. Federal Trade Commission and certain state agencies have investigated various Internet companies’ use of their customers’ personal information, and certain federal and state statutes regulate specific aspects of privacy and data collection practices. There are also a variety of state and federal restrictions on marketing activities conducted by telephone, the mail or by email, or over the Internet, including the Telephone Consumer Protection Act, the Telemarketing Sales Rule, state telemarketing laws, federal and state privacy laws, the CAN-SPAM Act, the Federal Trade Commission Act, the Fair Credit Reporting Act and the Consumer Protection Act and their accompanying regulations and guidelines. Because we engage in marketing activities over the Internet and by telephone, mail and email, we may be subject to these laws and regulations.

State, federal and foreign lending laws and regulations generally require accurate disclosure of the critical components of credit costs so that consumers can readily compare credit terms from various lenders. These laws and regulations also impose certain restrictions on the advertisement of these credit terms. Because we are an aggregator of rate and other information regarding many financial products, including mortgages, deposits and credit cards, we may be subject to some of these laws and regulations. The senior care industry is also subject to a number of federal and state laws and regulations. We believe that we have structured our business and our online services to comply with applicable laws and regulations as are currently in effect. Because of uncertainties as to the applicability of some of these laws and regulations to the Internet and, more specifically, to our type of business, and considering that our business has evolved and expanded.
in a relatively short period of time, and will continue to evolve and develop, we may not always have been, and may not always be, in compliance with all applicable federal, state and foreign laws and regulations.

Federal, state, local and foreign governments are also considering other legislative and regulatory proposals that would regulate the Internet in more and different ways than exist today. In addition, several states are considering legislative proposals to regulate senior living referral services. It is impossible to predict whether new restrictions, fees, or taxes will be imposed on our services, and whether and how we would be affected. Increased regulation of the Internet both in the United States and abroad may decrease its growth and hinder technological development, which may negatively impact the cost of doing business via the Internet or otherwise materially adversely affect our business, financial condition or operational results.

As a public company with securities listed on the New York Stock Exchange, we are also subject to review and oversight by the Securities and Exchange Commission (“SEC”) and the New York Stock Exchange.

**Employees**

As of December 31, 2016, we employed approximately 600 people. None of our employees are represented under collective bargaining agreements. We have never had a work stoppage. We consider our employee relations to be good.

**Available Information**

The Company’s annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports are available free of charge on the Company’s website at investor.bankrate.com as soon as practicable after such material is electronically filed with, or furnished to, the SEC. Information contained on our websites is not incorporated by reference into this Annual Report on Form 10-K.

In addition, copies of the Company’s Annual Report on Form 10-K will be made available, free of charge, on written request.

For further discussion concerning our business, see the information included in Items 7 (Management’s Discussion and Analysis of Financial Condition and Results of Operations) and 8 (Financial Statements and Supplementary Data) of this report.
An investment in our securities involves risk. You should carefully consider the following risks as well as the other information included in this Annual Report on Form 10-K, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes, before investing in our securities. Any of the following risks could materially and adversely affect our business, financial condition, results of operations or prospects, and cause the value of our securities to decline, which could cause you to lose all or part of your investment in our Company.

Risks Related to Our Business

Our success depends on revenue from online advertising and the sale of financial and senior care consumer inquiries.

We have historically derived, and we expect to continue to derive, the majority of our revenue through the monetization of consumer inquiries and the sale of advertising impressions on our online network. Any factors that reduce the amount our customers are willing to and do spend on advertising with us, or that limit their willingness to purchase consumer inquiries from us, could have a material and adverse effect on our business. These factors may include:

- our ability to maintain a significant number of unique website visitors, mobile visitors and application users;
- the willingness or interest of banks, credit card issuers, lenders, brokers, senior care providers and other advertisers in the business verticals in which we operate to advertise on our websites or mobile applications or purchase our leads, clicks, calls and referrals;
- the rate of conversion of visitors to some of our websites or mobile applications into credit card applicants and the rate at which credit card applications from consumers that come through our websites or mobile applications are approved by our credit card issuer customers;
- changes in law or regulation, or the enforcement of laws or regulations, including without limitation with respect to the advertising of personal financial services or senior care services, the provision of financial product consumer inquiries or senior care consumer inquiries, or privacy;
- the rate of conversion of consumers’ visits to our websites or mobile applications into transaction fees and/or revenue from banks, mortgage brokers or other lenders;
- the rate of conversion of consumers’ visits to our websites or mobile applications into senior care referrals and the rate at which those referrals result in move-ins with our senior care customers;
- our ability to compete with alternative advertising sources;
- our ability to maintain a significant number of sellable impressions generated from website visitors available to advertisers;
- our ability to accurately assess the number and demographic characteristics of our visitors;
- our ability to handle temporary high volume traffic spikes to our online network;
- our ability to convince traditional media advertisers to advertise on our online network; and
- our ability to increase traffic to our online network.

Most of our customer contracts are short-term and are subject to termination by the customer at any time and/or do not have any minimum purchase requirements. Customers who have longer-term contracts may fail to honor their existing contracts, choose not to renew their contracts or reduce their purchase volume under those contracts. If a significant number of customers or a few large customers decide not to continue advertising with us or purchasing our consumer inquiries, or materially reduce such activities, we could experience an immediate and substantial decline in our revenues and operating results over a relatively short period of time.

We face intense competitive pressures that may have a material and adverse effect on our business, financial condition and operating results.

We face intense competition in all our businesses, and we expect competition to remain intense in the future. We compete with, among others, search engines utilizing keyword cost-per-click advertising or comparison advertising sites/networks; lead aggregators and websites committed to specific personal finance or senior care products; numerous websites in each of our vertical categories competing for traffic and for advertisers; financial institutions, including mortgage lenders, deposit institutions, credit card issuers and other lenders, many of whom are also our customers; and traditional offline personal finance marketing channels, including direct mail, retail bank branch networks, television, radio, call centers and print advertising. Some of these competitors have significantly greater financial resources than we do and could use these resources to develop more directly competitive product offerings and editorial content and undertake advertising campaigns to promote those new offerings and content, which could result in diminished traffic to our online services and reduce our overall competitive and market position.

Our online competitors may adopt certain aspects of our business model or replicate the appearance and features of our online services, which could reduce our ability to differentiate our services. In addition, new competitors may enter this market as there are few barriers to entry. If one of these competitors is successful in such efforts, it could have a material and adverse effect on our business and operating results. For example, prior to Google’s termination of its Google Compare product in early 2016, Google Compare presented prominent comparisons of credit cards through its search engine, and in certain markets presented prominent comparisons of mortgage rates through its search engine. This diverted consumers away from our online services, including consumers who would otherwise have found, been directed to or been linked to our online services through the Google search engine. This diversion adversely impacted our business and operating results. In the future Google may choose to reenter our business verticals, or make available new products that compete with other parts of our business such as deposit rates, auto loans, personal loans or other rate information and tools (e.g., mortgage calculators) with similar adverse effect.

Many of our competitors have longer operating histories, greater name recognition, larger customer bases and/or significantly greater financial, technical or marketing resources than us. Many competitors have complementary products or services that drive traffic to their online services. In the future, competitors could introduce superior products and services or reduce prices below ours. Increased competition could result in lower consumer traffic, advertising rate reductions, reduced margins or loss of market share, any of which would adversely
We depend upon Internet search engines to attract a significant portion of the visitors to our websites, and any change in the prominence of our websites in search result listings or changes the visual layout of those listings could cause the number of visitors and/or the quality of those visitors to our websites to decline and have a material and adverse effect on our business, financial condition and operating results.

We depend in significant part on various Internet search engines, such as Google, Bing and Yahoo!, and other search websites to direct a significant number of visitors to our websites to provide our online services to our clients. Search websites typically provide two types of search results, algorithmic and paid listings. Algorithmic, or organic, listings are determined and displayed solely by a set of formulas designed by search companies. Paid listings can be purchased and then are displayed if particular words are included in a user’s Internet search. Placement in paid listings is generally not determined solely on the bid price, but also takes into account the search engines’ assessment of the quality of the website featured in the paid listing and other factors. We rely on both algorithmic and paid search results, as well as advertising on other websites, to direct a substantial share of the visitors to our websites.

Our ability to maintain the number of visitors to our websites from Internet search engines and other websites is not entirely within our control. Internet search engines frequently revise their algorithms in an attempt to optimize their search result listings or to implement their internal standards and strategies. Changes in the algorithms could cause our websites to receive less favorable placements, which could reduce the number of users who visit our websites. We have experienced and continue to experience fluctuations in the search result rankings for a number of our websites. Even where our search result rankings do not fluctuate, an Internet search website could take other steps to displace the placement of our websites on a search results page or otherwise change the visual layout of the search results page, which can reduce the number of consumer visits to our websites and adversely affect our business and operating results. For example, in early 2016 Google increased the number of paid advertisements at the top of its search results, which adversely impacted the number of consumers that click through to the websites managed by our businesses and adversely affected our business and operating results.

In addition, the prominence of the placement of our advertisements is in part determined by the amount we are willing to pay for the advertisement. We bid against our competitors for the display of paid search engine advertisements and some of our competitors have greater resources with which to bid and better brand recognition than we have. If competition for the display of paid advertisements in response to search terms related to our online services increases, our online advertising expenses could rise significantly or we may be required to reduce the number of our paid search advertisements. If we were to reduce our advertising with search engines, our consumer traffic may significantly decline or we may be unable to maintain a cost-effective search engine marketing program.

Other factors, such as search engine technical difficulties, search engine technical changes and technical or presentation changes we make to our websites, could also cause our websites to be listed less prominently in algorithmic search results. In addition, search engines retain broad discretion to remove from search results any company whose marketing practices are deemed to be inconsistent with the search engine’s guidelines. If our marketing practices do not comply with search engine guidelines, we may, without warning, not appear in search result listings at all. Any adverse effect on the placement of our websites in search engine results could reduce the number of users who visit our websites. In turn, any reduction in the number of visitors to our websites would negatively affect our ability to earn revenue. If visits to our websites decrease, our revenue may decline or we may need to resort to more costly sources to replace lost visitors, and such decreased revenue and/or increased expense could materially and adversely affect our business and profitability.

A portion of our revenue is attributable to consumer inquiries sourced from third parties, including but not limited to website publishers, lead aggregators and email marketers. In many instances, these third parties can change the inventory they make available to us at any time and, therefore, impact our revenue. If these third parties decide not to make inventory available to us, are purchased by one of our competitors or another company that decides to no longer make inventory available to us, or decides to demand a higher price for their products, we may not be able to find replacement inventory from other sources that satisfy our requirements in a timely and cost-effective manner, which could have an adverse impact on our revenues or operating results.

We depend on third parties for a portion of our credit card, banking and senior care traffic and revenues, and any material decline in our relationships with these third parties, or increase in the price of consumer inquiries from these third parties, could have an adverse impact on our revenues or operating results.

The business lines in which we currently operate and compete are characterized by rapidly-changing Internet media and marketing standards, changing technologies and platforms, frequent new product and service introductions, and changing consumer and customer demands and modes of accessing and providing information. The number of individuals who access the Internet through devices other than a personal computer, such as tablets and smartphones, has increased dramatically. The introduction of new technologies and services embodying new technologies and the emergence of new industry standards and practices could render our existing technologies and services obsolete and unmarketable or require unanticipated investments in technology. If consumers find our online services difficult to access through alternative devices or our competitors develop product offerings that are better adapted to or more easily accessible through alternative devices, we may fail to capture a sufficient share of an increasingly important portion of the market for online services and may fail to attract both advertisers and online traffic.

Our future success will depend in part on our ability to adapt to these rapidly-changing digital media formats and platforms and other technologies and platforms, including without limitation the increasing shift by consumers to mobile devices from personal computers and the increasing use of social media channels, we could lose consumers, customers or advertising inventory and our results of operations may suffer.

We depend in significant part on various Internet search engines, such as Google, Bing and Yahoo!, and other search websites to direct a significant number of visitors to our websites to provide our online services to our clients. Search websites typically provide two types of search results, algorithmic and paid listings. Algorithmic, or organic, listings are determined and displayed solely by a set of formulas designed by search companies. Paid listings can be purchased and then are displayed if particular words are included in a user’s Internet search. Placement in paid listings is generally not determined solely on the bid price, but also takes into account the search engines’ assessment of the quality of the website featured in the paid listing and other factors. We rely on both algorithmic and paid search results, as well as advertising on other websites, to direct a substantial share of the visitors to our websites.

Our ability to maintain the number of visitors to our websites from Internet search engines and other websites is not entirely within our control. Internet search engines frequently revise their algorithms in an attempt to optimize their search result listings or to implement their internal standards and strategies. Changes in the algorithms could cause our websites to receive less favorable placements, which could reduce the number of users who visit our websites. We have experienced and continue to experience fluctuations in the search result rankings for a number of our websites. Even where our search result rankings do not fluctuate, an Internet search website could take other steps to displace the placement of our websites on a search results page or otherwise change the visual layout of the search results page, which can reduce the number of consumer visits to our websites and adversely affect our business and operating results. For example, in early 2016 Google increased the number of paid advertisements at the top of its search results, which adversely impacted the number of consumers that click through to the websites managed by our businesses and adversely affected our business and operating results.

In addition, the prominence of the placement of our advertisements is in part determined by the amount we are willing to pay for the advertisement. We bid against our competitors for the display of paid search engine advertisements and some of our competitors have greater resources with which to bid and better brand recognition than we have. If competition for the display of paid advertisements in response to search terms related to our online services increases, our online advertising expenses could rise significantly or we may be required to reduce the number of our paid search advertisements. If we were to reduce our advertising with search engines, our consumer traffic may significantly decline or we may be unable to maintain a cost-effective search engine marketing program.

Other factors, such as search engine technical difficulties, search engine technical changes and technical or presentation changes we make to our websites, could also cause our websites to be listed less prominently in algorithmic search results. In addition, search engines retain broad discretion to remove from search results any company whose marketing practices are deemed to be inconsistent with the search engine’s guidelines. If our marketing practices do not comply with search engine guidelines, we may, without warning, not appear in search result listings at all. Any adverse effect on the placement of our websites in search engine results could reduce the number of users who visit our websites. In turn, any reduction in the number of visitors to our websites would negatively affect our ability to earn revenue. If visits to our websites decrease, our revenue may decline or we may need to resort to more costly sources to replace lost visitors, and such decreased revenue and/or increased expense could materially and adversely affect our business and profitability.

A portion of our revenue is attributable to consumer inquiries sourced from third parties, including but not limited to website publishers, lead aggregators and email marketers. In many instances, these third parties can change the inventory they make available to us at any time and, therefore, impact our revenue. If these third parties decide not to make inventory available to us, are purchased by one of our competitors or another company that decides to no longer make inventory available to us, or decides to demand a higher price for their products, we may not be able to find replacement inventory from other sources that satisfy our requirements in a timely and cost-effective manner, which could have an adverse impact on our revenues or operating results.

We depend on third parties for a portion of our credit card, banking and senior care traffic and revenues, and any material decline in our relationships with these third parties, or increase in the price of consumer inquiries from these third parties, could have an adverse impact on our revenues or operating results.

The business lines in which we currently operate and compete are characterized by rapidly-changing Internet media and marketing standards, changing technologies and platforms, frequent new product and service introductions, and changing consumer and customer demands and modes of accessing and providing information. The number of individuals who access the Internet through devices other than a personal computer, such as tablets and smartphones, has increased dramatically. The introduction of new technologies and services embodying new technologies and the emergence of new industry standards and practices could render our existing technologies and services obsolete and unmarketable or require unanticipated investments in technology. If consumers find our online services difficult to access through alternative devices or our competitors develop product offerings that are better adapted to or more easily accessible through alternative devices, we may fail to capture a sufficient share of an increasingly important portion of the market for online services and may fail to attract both advertisers and online traffic.

Our future success will depend in part on our ability to adapt to these rapidly-changing digital media formats and platforms and other technologies and platforms, including without limitation the increasing shift by consumers to mobile devices from personal computers and the increasing use of social media channels, we could lose consumers, customers or advertising inventory and our results of operations may suffer.

We depend upon Internet search engines to attract a significant portion of the visitors to our websites, and any change in the prominence of our websites in search result listings or changes the visual layout of those listings could cause the number of visitors and/or the quality of those visitors to our websites to decline and have a material and adverse effect on our business, financial condition and operating results.
If we fail to adapt successfully to such developments in a timely manner or if the execution of our social media strategy is not successful, we could lose consumers and customers, our expenses could increase and we could lose advertising inventory, any of which could have a material and adverse impact on our business, financial condition and results of operations.

New technologies that block online advertisements could adversely affect our business and operating results.

Technologies have been developed that can block the display of advertisements and that provide tools to consumers to opt out of advertising products. A portion of our revenues are derived from fees paid to us by advertisers in connection with the display of advertisements on the web pages of our websites and those of our business partners or in connection with certain actions consumers take with respect to those advertisements. As a result, technologies that prevent or diminish our ability to display advertisements to consumers, or the ability of consumers to click on such advertisements tools could adversely affect our business and operating results.

Our websites, applications, widgets and other products may encounter technical problems, service interruptions or security failures.

In the past, our websites have experienced significant increases in traffic and our applications and widgets have experienced significant increases in use in response to interest rate movements and other business or financial news events. The number of our visitors has continued to increase over time, and we are seeking to further increase our visitor traffic. As a result, our servers must accommodate spikes in demand for our web pages in addition to potential significant growth in traffic.

Our websites, applications, widgets and other products have in the past, and may in the future, experience slower response times or interruptions as a result of increased traffic or for other reasons. These delays and interruptions may increase in the future if our servers and infrastructure are not able to accommodate potential significant traffic growth and spikes in demand. Delays and interruptions resulting from the failure to maintain service connections to our websites or applications could frustrate visitors and reduce future traffic on our online platforms, which could have a material adverse effect on our business or results of operations.

Our principal communications, networking and operations equipment is located in commercial co-location data centers and through Amazon Web Services. Additional communications, networking and operations equipment is located at our office locations in Palm Beach Gardens, Florida and Austin, Texas, as well as other of our locations. Multiple system or network failures or catastrophic loss of facility involving these locations, particularly data centers, could lead to interruptions or delays in service for our websites or applications, which could have a material and adverse effect on our business and results of operations. Additionally, we are dependent on third-party providers and their ability to provide safe, effective and cost-efficient hardware and operating environments. Our operations are dependent upon our ability, and our third-party providers’ ability, to protect our systems against damage from fires, floods, tornadoes, hurricanes, earthquakes, power losses, telecommunications failures, physical or electronic break-ins, computer viruses, acts of terrorism, hacker attacks and other events beyond our control. If any of these events were to occur, it could have a material and adverse effect on our business and results of operations. Although we maintain insurance to cover a variety of risks, the scope and amount of our insurance coverage may not be sufficient to cover our losses resulting from system or security failures or other disruptions to our online operations.

Fraudulent Internet transactions, consumer identity theft, security breaches and privacy concerns could have a material and adverse effect on our business, financial condition, operating results and reputation.

If consumers experience identity theft, data security breaches or fraud after clicking through one of our websites or mobile applications to apply for credit cards on the websites of credit card issuers, or mortgage or deposit products or other loan or banking products on the websites of brokers, lenders or banks, or following the completion of a lead form, or as a result of the use of our My.CreditCards, myBankrate, Quizzle, Score&Report, Wallaby or other platforms or services, we may be exposed to significant liability, adverse publicity and damage to our reputation. Despite our implementation of security measures, our computer systems may be susceptible to electronic or physical computer break-ins, viruses and other disruptions and security breaches. In addition, we depend on vendors to store or process certain information, some of which may be private or include personally-identifiable information. If these vendors fail to maintain adequate information security systems, or in the event they experience a breach of their networks, and consumer information is compromised, our business, reputation or results of operations could be significantly harmed. In addition, third parties may attempt to fraudulently induce employees or consumers to disclose information in order to gain access to consumer data. Any perceived or actual unauthorized disclosure of personally-identifiable information of consumers using our services could significantly harm our reputation, impair our ability to attract consumers and attract and retain our advertisers, subject us to regulatory inquiry, investigation and claims, and subject us to private claims or litigation alleging damages suffered by consumers, any of which alone or together could have a material and adverse effect on our business, financial condition and operating results.

To the extent that fraud or identity theft causes a general decline in consumer confidence in online financial transactions, our revenues could decline and our reputation could be damaged. If consumers are reluctant to use our services because of concerns over data privacy or fraud, our ability to generate revenues would be impaired. Our revenues would also decline if changes in industry standards, regulations or laws deterred people from using online services to conduct transactions, such as applying for credit cards, or from seeking information or services that involve the transmission of confidential information. In addition, if technology upgrades or other expenditures are required to prevent security breaches of our network, boost general consumer confidence in sharing information or conducting financial transactions using online services, or prevent fraud and identity theft, we may be required to expend significant capital and other resources. Further, advances in computer capabilities, new discoveries in the field of cryptography, or other events or developments could result in a compromise or breach of the algorithms we use to protect consumers’ and customer companies’ confidential information, which could have a material and adverse effect on our business, financial condition and operating results.

Our business depends on a strong brand and content, thus we will not be able to attract visitors and advertisers if we do not maintain and develop our brands and content.

It is critical for us to maintain and develop our brands and content so as to effectively expand our visitor base and our revenues. Our success in promoting and enhancing our brands, as well as our ability to remain relevant and competitive, depends on our success in offering high quality content, features, product offers, services and functionality. In addition, we may take actions that have the unintended consequence of harming our brand. If our actions cause consumers to question the value of our marketplace, our business and reputation may suffer. If we fail to promote our brands successfully or if visitors to our websites, users of our applications, or advertisers do not perceive our content and services to be of high quality, we may not be able to continue growing our business and attracting visitors and advertisers, which will in turn negatively impact our operating results.

Our results of operations may fluctuate significantly.
Our results of operations are difficult to predict and may fluctuate significantly in the future as a result of factors, many of which are beyond our control. These factors include:

- changes in fees paid by our customers or customer demand for our services;
- traffic levels on our websites and mobile applications, which can fluctuate significantly;
- changes in the demand for online products and services;
- changes in fee or revenue-sharing arrangements with our distribution partners;
- changes in application approval rates by our credit card issuer customers;
- our ability to enter into or renew key distribution agreements;
- the introduction of new advertising services by our competitors;
- failure by advertisers or their agencies to pay amounts owed to us in a timely manner or at all;
- failure by our credit card customers to timely report, or to report at all, approved credit card applications for consumers that come through our websites;
- failure by our senior care customers to timely report, or to report at all, completed move-ins of the consumers that come through our websites;
- changes in our capital or operating expenses;
- changes in consumer confidence;
- changes in interest rates;
- general economic conditions; and
- changes in financial services, senior care-related, or privacy laws or regulations, or other laws or regulations, or changes in the interpretations or enforcement by government regulators of such laws or regulations.

Our future revenue and results of operations are difficult to forecast due to these factors as well as other factors. As a result, period-to-period comparisons of our results of operations may not be meaningful, and you should not rely on past periods as indicators of future performance.

**Failure to maintain effective disclosure controls and procedures or internal control over our financial reporting could materially and adversely affect our operations, profitability or reputation.**

We have concluded that, as of December 31, 2016, we had a material weakness in our internal control over financial reporting and that, as a result, our internal control over financial reporting was not effective at such date. See Item 9A “Controls and Procedures.” A material weakness is a deficiency, or combination of deficiencies, in internal controls over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. We are in the process of implementing efforts to remediate the identified material weakness.

There can be no assurance that our disclosure controls and procedures will be effective in the future or that we will not experience any other material weaknesses or significant deficiencies in internal control over financial reporting. Any such lapses or deficiencies could adversely impact our ability to provide timely and accurate financial information. An inability to report financial information timely and accurately or to maintain effective disclosure controls and procedures could materially and adversely affect our business, operating results or financial condition, restrict our ability to access the capital markets, require us to expend significant resources to correct the lapses or deficiencies, expose us to regulatory or legal proceedings, including litigation brought by private individuals, subject us to fines, penalties or judgments, harm our reputation, or otherwise cause a decline in investor confidence and our stock price.

**Our visitor traffic can be impacted by interest rate volatility.**

We provide interest rate information for credit cards, mortgages and other loans, and a variety of deposit accounts. Visitor traffic to our online platforms tends to increase with interest rate movements. Factors that have caused significant visitor fluctuations in the past have been Federal Reserve Board actions and general market conditions affecting home mortgage and deposit interest rates and access to credit. Additionally, the level of traffic to our websites can be dependent on interest rate levels as well as mortgage financing and refinancing activity. Accordingly, a slowdown in mortgage production or refinancing volumes could have a material and adverse effect on our business. Conversely, a sudden, significant change in interest rates could dramatically increase our page views such that we would be unable to sell sufficient advertisements to take full advantage of the spike in traffic.

**Risks associated with our strategic acquisitions or dispositions could adversely affect our business or results of operations.**

We have acquired a number of companies and assets of companies in the past and may make additional acquisitions, asset purchases and strategic investments in the future. For example, in April 2015 we completed the acquisition of Quizzle, LLC (owner of Quizzle.com) and in June 2016 we completed the acquisition of the NextAdvisor business. We will continue to consider acquisitions, asset purchases and joint ventures as a means of enhancing stockholder value. Our success in integrating our acquired businesses will depend upon our ability to retain key personnel, avoid diversion of management’s attention from operational matters, integrate the technical operations and personnel of the acquired companies, and achieve the expected financial results, synergies and other benefits from our acquisitions.

In addition, future acquisitions could result in the incurrence of additional debt, costs and contingent liabilities. Integration of acquired operations may take longer, or be more costly or disruptive to our business, than originally anticipated.

It is also possible that expected synergies and other benefits from our acquisitions may not materialize in full or at all. We may also incur costs and divert management attention through potential acquisitions that are never consummated. Future impairment losses on goodwill and intangible assets with an indefinite life recorded in connection with an acquisition, or restructuring charges, could also occur and negatively affect our results of operations.

Despite our due diligence investigation of an acquisition target, there may be liabilities of the seller companies that we fail to or are unable to discover during the due diligence investigation and for which we, as a successor owner, may be responsible and which could have a material and adverse effect on our business, financial condition or results of operations. In connection with acquisitions, we generally seek to minimize the impact of these types of potential liabilities through the structure of the transaction or through indemnities and warranties from the seller, which may in some instances be supported by deferring payment of a portion of the purchase price or use of an escrow. However, these indemnities and warranties, if obtained, may not fully cover the liabilities due to limitations in scope, amount or duration,
financial limitations of the indemnitor or warrantor, or other reasons.

In connection with a disposition of assets or a business, we may provide a buyer with certain indemnities or warranties, such as was the case with the disposition of our Insurance business at the end of 2015. There may also be liabilities or obligations we retain with respect to the sold assets or business. Liability from these indemnities or warranties, or from any retained liabilities or obligations, could have a material and adverse effect on our business, financial condition or results of operations, as could any successful invocation by the buyer of contract provisions that permit post-closing adjustments to the purchase price.

Our ability to consummate any future acquisitions on terms that are favorable to us may be limited by the number of attractive acquisition targets, internal demands, our resources and our ability to obtain financing.

We depend on attracting and retaining executive officers and personnel to continue the implementation of our long-term business strategy and could be harmed by the loss of their services.

We believe that our continued growth and future success will depend in large part on the skills of our senior management team and other skilled employees. The loss of service of one or more of our executive officers or of other key personnel could reduce our ability to successfully implement our long-term business strategy, our business could suffer and the value of our common stock could be materially and adversely affected. Leadership changes will occur from time to time and we cannot predict whether significant resignations will occur or whether we will be able to recruit additional qualified personnel. We believe our senior management team possesses valuable knowledge about our business and that their knowledge and relationships would be very difficult to replicate. Our success and the quality of our content also depend on the expertise of our writers and bloggers and on their relationships with consumers, the media, financial experts and other sources of information. For example, the performance of The Points Guy business has been driven by the ability of the founder of that business and his team to connect with and grow the target audience of that business. The loss of key personnel, or the inability to recruit and retain qualified personnel in the future, could have a material and adverse effect on our business, financial condition or operating results.

If our employees were to unionize, our operating costs would likely increase.

None of our employees are currently represented by a union or subject to a collective bargaining agreement. However, we have no assurance that some or all of our employees will not unionize in the future, which could increase our operating costs, result in other business challenges, force us to alter our operating methods, and have a material and adverse effect on our operating results.

We are from time to time involved in, or may in the future be subject to, claims, suits, government inquiries or investigations, and other proceedings that may have a material and adverse effect on our business, operating results or financial condition.

We are from time to time involved in, or may in the future be subject to, claims, suits, government inquiries or investigations, and proceedings arising from our business or the fact that we are a public company, including actions with respect to intellectual property claims, privacy, consumer protection, information security, securities laws and regulations, transactions in which we are involved, data protection or law enforcement matters, tax matters, labor and employment claims, commercial claims, as well as shareholder derivative actions, class action lawsuits, and other matters. We are also at risk where we have agreed to indemnify others for losses related to legal proceedings or from direct harm, including without limitation in connection with the sale of our Insurance business. Such claims, suits, inquiries, investigations, and proceedings are inherently uncertain and their results cannot be predicted with certainty. Defense costs and any resulting damage awards or settlement amounts may not be fully covered by our insurance policies. Regardless of the outcome, any such legal proceedings can have an adverse impact on us because of legal costs, diversion of attention of management and other personnel, and other factors. In addition, it is possible that a resolution of one or more such proceedings could result in reputational harm, liability, penalties, or sanctions, as well as judgments, consent decrees, or orders preventing us from offering certain features, functionalities, products, or services, or requiring a change in our business practices, products or technologies, which could in the future materially and adversely affect our business, operating results or financial condition. In addition, accounting rules may require us to record a liability related to a particular matter prior to its resolution if the occurrence of a loss related to such matter becomes probable and reasonably estimable.

In addition to litigation in the ordinary course of business, we are currently involved in litigation in which it has been alleged that we have participated in anti-competitive conduct. See the description of the Bancorp litigation in Note 10 (Commitments and Contingencies) to our consolidated financial statements in this report. Antitrust litigation is by its nature not in the ordinary course. Defending antitrust allegations, even if ultimately successful, can be costly and have a negative effect on our business. In addition, the relief sought by the plaintiffs in this case, if granted, could prevent Bankrate from continuing to pursue at least some aspects of its current business model, which could have a material and adverse effect on our business, financial condition and results of operations.

We make product and investment decisions that may not prioritize short-term financial results.

We make product and investment decisions that may have the effect of reducing our short-term revenue or profitability if we believe that the decisions benefit the consumer experience, conversion rates and/or the pricing of our products or services, thereby ultimately improving our financial performance over the long-term. For example, we have reduced the cost-per-click pricing on certain of our rate tables at certain times to increase the number of advertisers and thereby increase the number of search results that appear in response to a consumer query. Any short-term reductions in revenue or profitability could be more severe than we anticipate or these decisions may not produce the long-term benefits that we expect, in which case our relationships with consumers and advertisers and our business and results of operations could be adversely affected.

Insurance coverage may not be available to cover all of our potential liability and available coverage may not be sufficient to cover all claims that we may incur.

Our ability to obtain liability insurance, its coverage levels, deductibles, premiums and exclusions are all dependent on market factors, our loss history and insurers’ perception of our overall risk profile. We cannot ensure that our insurance will cover all claims or that insurance coverage will be available at economically acceptable rates. Significant uninsured liabilities could have a material and adverse effect on our business, financial condition and results of operations. In addition, we are self-insured for our health benefits. We estimate future expenditures and establish accruals (reserves) based on the estimates. If the number or severity of claims increases, or we are required to accrue or pay additional amounts because the claims prove to be more severe than our original assessment, our operating results would be adversely affected.
We are subject to operational risk.

We are subject to operational risk, which represents the risk of loss resulting from human error, inadequate or failed internal processes and systems, and external events. Operational risk also encompasses compliance and legal risk, which is the risk of loss from violations of, or noncompliance with, laws, rules, regulations, prescribed practices or ethical standards, as well as the risk of our noncompliance with contractual and other obligations. We are also exposed to operational risk through the aspects of our business that we outsource, and the effect that changes in circumstances or capabilities of our outsourcing vendors can have on our ability to continue to perform operational functions necessary to our business. Although we seek to mitigate operational risk through a system of internal controls, no system of controls, however well designed and maintained, is infallible. Control weaknesses or failures or other operational risks could result in charges, increased operational costs, harm to our reputation or foregone business opportunities, any of which could have a material and adverse effect on our business or results of operations.

We rely on the protection of our intellectual property.

Our intellectual property includes our unique research and editorial content of our websites, our applications, our domain names, our URLs, our trade secrets and know-how, our registered and unregistered trademarks and our print publications. We rely on a combination of copyrights, patents, trademarks, trade secret laws, and our policy and restrictions on disclosure to protect our intellectual property. We also enter into confidentiality agreements with our employees and consultants and seek to control access to and distribution of our proprietary information. Despite these precautions, it may be possible for other parties to copy or otherwise obtain and use the content of our websites, mobile applications or print publications without authorization. A failure to protect our intellectual property in a meaningful manner could have a material and adverse effect on our business.

We may be subject to claims that we violated intellectual property rights of others, which even if unfounded or decided in our favor may be extremely costly to defend, could require us to pay significant damages and could limit our ability to operate.

Companies in the Internet and technology industries, and other patent holders seeking to profit from royalties in connection with grants of licenses, own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. We may in the future receive notices that claim we have misappropriated or misused parties’ intellectual property rights. There may be intellectual property rights held by others, including issued or pending patents and trademarks, that cover significant aspects of our technologies, content, branding or business methods.

Because we license some of our data and content from other parties, we may be exposed to infringement actions if such parties do not possess the necessary proprietary rights. Generally, we obtain representations as to the origin and ownership of licensed content and obtain indemnification to cover any breach of any of these representations. However, these representations may not be accurate and the indemnification may be limited or otherwise may not be sufficient to provide adequate compensation for any breach of these representations.

Any future infringement or other claims or prosecutions related to our intellectual property could have a material and adverse effect on our business and results of operations. Defending against any of these claims, with or without merit, could be time-consuming, result in costly litigation and diversion of technical and management personnel or require us to introduce new content or trademarks, develop new technology or enter into royalty or licensing agreements. These royalty or licensing agreements, if required, may not be available on acceptable terms, if at all.

We may face liability for, and may be subject to claims related to, information on our websites or mobile applications, which even if unfounded or decided in our favor may be extremely costly to defend, could require us to pay significant damages and could limit our ability to operate.

Much of the information published on our online platforms and in our print publications relates to the competitiveness of financial institutions’ rates, products and services. We also publish editorial and other content designed to educate consumers about banking, personal finance and senior care products, and on certain of our websites provide a platform for user-generated content. If the information we provide is not accurate or is construed as misleading or outdated, consumers and others could lose confidence in our services and attempt to hold us liable for damages and government regulators could impose fines or penalties on us. We may be subjected to claims of violations of law or regulation, and claims for defamation, negligence, discrimination, invasion of personal privacy, fraud, deceptive practices, copyright or trademark infringement, conflicts of interest or other theories relating to the information we publish. We may also be exposed to similar liability in connection with content that users post to our websites through ratings, reviews, forums, blogs, comments, and other social media features. In addition, if there are errors or omissions in information we publish, consumers, individually or through consumer class actions, could seek damages from us for losses incurred if they relied on incorrect information we provided. These types of claims have been brought, sometimes successfully, against providers of online services as well as print publications. The scope and amount of our insurance may not adequately protect us against these types of claims.

We may face liability for, and may be subject to claims related to, inaccurate advertising content provided to us, which even if unfounded or decided in our favor may be extremely costly to defend, could require us to pay significant damages and could limit our ability to operate.

Much of the information on our online platforms that is provided by advertisers and collected from third parties relates to the rates, costs and features for various loan, depository, personal credit and investment products offered by financial institutions, mortgage companies, investment companies and others participating in the personal finance marketplace, and for providers of senior care facilities. We are exposed to the risk that some advertisers may provide us, or directly post on our websites or mobile applications, (i) inaccurate information about their product rates, costs and features, or (ii) rates, costs and features that are not available to all consumers. This could cause consumers to lose confidence in the information we provide, causing certain advertisers to become dissatisfied with our services, and result in lawsuits being filed or regulatory action against us which could materially and adversely affect our business and results of operations. The scope and amount of our insurance may not adequately protect us against these types of lawsuits or actions.

Our success depends on establishing and maintaining distribution arrangements.

Our business strategy includes the distribution of our content through the establishment of co-branded web pages with high traffic business and personal finance sections of third party online services and websites. Providing access to these co-branded web pages is a significant part of the value we offer to our advertisers. We compete with other providers of services similar to ours to maintain our current relationships with these third party online operators and establish new relationships. In addition, as we expand our personal finance content
or change our services, or as these third party online operators acquire or develop their own services, some of these third party online operators may perceive us as a competitor. As a result, they may be unwilling to promote distribution of our content or services. If our distribution arrangements do not attract a sufficient number of visitors to support our current advertising model, or if we do not establish and maintain distribution arrangements on favorable economic terms, our business could be adversely affected.

We do not have exclusive relationships or long-term contracts with the banks, credit card issuers, mortgage brokers and lenders, other lenders, or senior care companies that are our customers, which may limit our ability to retain these customers as participants in our marketplace and maintain the attractiveness of our services to consumers.

We do not have exclusive relationship with the banks, credit card issuers, mortgage brokers and lenders, other lenders, or senior care companies whose products are advertised on our online marketplace, and thus, consumers may obtain services or products from these companies without using our services. Many of our customers also offer their products directly to consumers through agents, mass marketing campaigns or other traditional methods of distribution. In many cases, our customers also offer their products and services online, either directly to consumers or through one or more of our online competitors, or both. An inability to retain these customers as participants in our marketplace could materially and adversely affect our business, revenues and results of operations.

Our credit card and senior care revenue is concentrated among a small number of customers.

A significant portion of the revenue in our credit card and senior care businesses is generated from a small number of trade customers. Our credit card business revenue is concentrated among six of the major credit card issuers and therefore the loss of any one of these issuers as a customer, or a significant reduction in business with an issuer, could meaningfully reduce our credit cards business revenue. We also expect that a meaningful portion of our senior care referral revenues will continue to depend on referral fees from a small group of customers. The loss of one of these customers, or a significant reduction in advertising spend with us by one of these customers, could meaningfully reduce our senior care referral revenue. Industry consolidation resulting in a combination of customers in either of these businesses could also result in the loss of a customer, or a significant reduction in business with a customer, which could meaningfully reduce our revenues. In addition, if a significant customer in either of these businesses experiences operating issues, regulatory issues, bad publicity or other problems, the fees we receive from that customer may be materially reduced.

We may be required to record a significant charge to earnings if our goodwill or amortizable intangible assets become impaired.

We are required under accounting principles generally accepted in the United States of America to review our amortizable intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually and may be tested at other times if a triggering event occurs. Factors that may be considered include a change in circumstances indicating that the carrying value of our amortizable intangible assets may not be recoverable include, among others, anticipated competition, loss of key personnel, or a significant adverse change in the business environment or performance of the reporting unit. We may be required to record a significant charge to earnings in our consolidated financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined. This could adversely impact our results of operations.

During the second quarter 2016 management noted that the operating results of its Banking reporting unit had begun to track below plan, primarily due to macroeconomic trends impacting its deposit and display advertising businesses. This triggering event resulted in impairment testing as of June 30, 2016 where it was concluded that the reporting unit’s goodwill was impaired, and we recorded a $25.0 million expense for the impairment. In the third quarter 2016, as a result of management’s revision of the strategy of its Quizzle reporting unit and integration of the Quizzle operations into the Banking segment, management determined that a triggering event for impairment testing at the pre-realigned Quizzle reporting unit had occurred. An estimated impairment of goodwill for the pre-realigned Quizzle reporting unit of $4.2 million was recorded as of September 30, 2016. The impairment analysis for Quizzle was completed in the fourth quarter 2016, and we recorded an additional $2.4 million impairment to goodwill and $7.5 million impairment to intangible assets for the pre-realigned Quizzle reporting unit. During the fourth quarter 2016, management noted that the operating results of its Senior Care reporting unit was tracking below plan, resulting in a triggering event for impairment testing as of December 31, 2016. It was concluded that the reporting unit goodwill was impaired and we recorded a $4.0 million expense for the impairment of goodwill.

Our business and results of operations could be negatively impacted by adverse tax events.

New sales or use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time. Such enactments could adversely affect our business and results of operations. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us, or our conclusions regarding the applicability of existing tax laws, statutes, rules, regulations and ordinances could be incorrect. These events could require us to pay additional tax amounts on a prospective or retroactive basis, as well as require us to pay fees, penalties and/or interest for past amounts deemed to be due. In addition, our revenue may decline because we may have to charge more for our services which could reduce demand for those services.

New, changed, modified or newly interpreted or applied tax laws could also increase our compliance, operating and other costs, as well as the costs of our products or services. Further, these events could decrease the capital we have available to operate our business. Any or all of these events could adversely affect our business and results of operations.

Unfavorable resolution of tax contingencies could adversely affect us.

Our tax returns and positions are subject to review and audit by federal, state, local and international taxing authorities. An unfavorable outcome to a tax audit could result in higher tax expense, and could adversely impact our financial condition, results of operations or cash flows.

We may expand to other international markets, in addition to our United Kingdom operations, in which we may have limited experience.

We have websites for consumers located in the United Kingdom. In the event that we expand into other international markets, we will have only limited experience in marketing and operating our products and services in those markets. Expansion into international markets requires significant management attention and financial resources, may require the attraction, retention and management of local offices or personnel, and requires us to tailor our services and information to the local market as well as to adapt to local cultures, languages, regulations and standards. Certain international markets may be slower than domestic markets in adopting the Internet as an advertising and commerce medium or in developing telecommunications or online infrastructure and so our operations in international markets may not develop at a rate that supports our level of investment. In addition, international consumers may not adopt the Internet for personal finance content at all or as frequently as U.S. consumers.
Our international operations are subject to increased risks which could harm our business, operating results and financial condition.

We face certain risks inherent in doing business internationally, including:

- trade barriers and changes in trade regulations;
- difficulties in developing, staffing and simultaneously managing foreign operations as a result of distance, language, and cultural differences;
- restrictions on the use of or access to the Internet;
- longer payment cycles;
- credit risk and higher levels of payment fraud;
- currency exchange rate fluctuations;
- political or social unrest or economic instability;
- seasonal volatility in business activity;
- risks related to compliance with applicable regulations, including but not limited to anti-corruption laws such as the Foreign Corrupt Practices Act and U.K. Bribery Act;
- risks related to government regulation or required compliance with local laws in certain jurisdictions, including labor laws; and
- potentially adverse tax consequences.

One or more of these factors could harm our future international operations and consequently, could harm our brand, business, operating results, and financial condition.

If we fail to detect click-through fraud or other invalid clicks, other fraud on advertisements or unscrupulous advertisers, we could lose the confidence of our other advertisers or our customers and all or part of their business, thereby causing our business to suffer or resulting in adverse regulatory actions.

We are exposed to the risk of fraudulent or other invalid clicks on our advertisements or actions with respect to our consumer inquiry sources. We may in the future have to refund revenue that our advertisers or customers have paid to us and that was later attributed to, or suspected to be caused by fraud or other invalid clicks. Fraudulent or other invalid clicks may result in us receiving advertising fees that are not the result of clicks generated by consumers. Click-through fraud occurs when a person or automated system clicks on an advertisement displayed on a website with the intent of generating the revenue share payment to the publisher rather than to view the underlying content. Action fraud occurs when on-line forms are completed with false or fictitious information in an effort to increase the compensable actions in respect of which the recipient of such information is to be compensated. We do not charge our advertisers or customers for fraudulent or certain other invalid clicks or actions when they are detected, and such fraudulent or invalid activities could negatively affect our profitability or harm our reputation. If fraudulent or other invalid clicks or actions are not detected, the affected advertisers or customers may experience a reduced return on their investment in our programs, which could lead the advertisers or customers to become dissatisfied with our campaigns, and in turn, lead to loss of advertisers or customers and the related revenue.

We are also exposed to the risk that advertisers who advertise on our website will advertise interest rates or other terms on a variety of financial products that they do not intend to honor. This “bait and switch” activity encourages consumers to contact fraudulent advertisers over legitimate advertisers because the fraudulent advertisers claim to offer better interest rates or other terms. Such activity could hurt our reputation and our brand and lead to our other advertisers becoming dissatisfied with our advertising programs, which could lead to loss of advertisers and revenue. It could also result in regulatory action against us, including without limitation by the Federal Trade Commission (“FTC”) or the CFPB, which could have a material and adverse effect on our business and results of operations.

Regulation of the Internet is uncertain and subject to change.

Laws and regulations that apply to online communications, commerce and advertising are continuously evolving and developing and the extent of future government regulation is uncertain. Federal and state laws and regulations govern various aspects of our online business, including intellectual property ownership and infringement, trade secrets, the distribution of electronic communications, marketing and advertising, sweepstakes and promotions, user privacy and data security, search engines and Internet tracking technologies. Additionally, taxation of online services or electronic commerce transactions may be imposed. Future laws, regulations or taxation, or changes in interpretations of existing laws or regulations, could result in a decline in the use of online services and the viability of Internet commerce, which could have a material and adverse effect on our business.

Laws and regulations may limit, restrict or place additional requirements on the way we operate our business or establish and maintain our online relationships, and may subject us to liabilities, any of which could materially and adversely affect our business, financial condition and results of operations.

We market and provide services in heavily regulated industries through a number of different channels across the United States and abroad. As a result, our businesses have been and remain subject to a variety of statutes, rules, regulations, policies and procedures in various jurisdictions in the United States as well as other countries, which are subject to change at any time. If we fail to comply with applicable laws, rules and regulations, or to obtain and maintain required licenses, we could be subject to fines and/or proceedings by governmental agencies and/or private litigation, which could materially and adversely affect our business, financial condition and results of operations.

Federal, state and foreign lending laws and regulations generally require accurate disclosure of the critical components of credit costs so that consumers can readily compare credit terms from various lenders. These laws and regulations also impose certain restrictions on the advertisement of these credit terms. Because we are an aggregator of rate and other information regarding many financial products, including mortgages, deposits and credit cards, we may be subject to some of these laws and regulations and we may be held liable under these laws and regulations for information provided through our online services.

We conduct marketing activities using the telephone, email and other online marketing channels to generate consumer inquiries for our business. The marketing industry is subject to numerous federal and state laws and regulations, such as the Telemarketing Sales Rule, state telemarketing laws, federal and state privacy laws, the CAN-SPAM Act, the Telephone Consumer Protection Act (“TCPA”) and the Federal Trade Commission Act and its accompanying regulations and guidelines, among others. Foreign laws and regulations, such as the Canadian Anti-Spam Law (“CASL”), may also apply to our business activities to the extent we are doing business with or marketing to consumers in foreign jurisdictions.

Most of the statutes and regulations in the United States (and certain foreign statutes and regulations, such as CASL) allow a private right of action for the recovery of damages or provide for enforcement by the FTC, CFPB, Federal Communications Commission (“FCC”), other governmental bodies, state attorneys general or state agencies permitting the recovery of significant civil or criminal penalties, costs and
attorneys’ fees in the event that regulations are violated. We believe that we comply with all such applicable laws and regulations, and try to obtain assurances that our advertisers, third party partners, and third parties that we rely on for telemarketing, email marketing and other lead generation activities operate in compliance with all applicable laws and regulations. However, we cannot ensure that the FTC, CFPB, FCC, other governmental bodies, state attorneys general, state agencies or private litigants will not take the position that we are not in compliance with applicable laws and regulations, or that they will not attempt to hold us responsible for any unlawful acts conducted by our advertisers, third party partners, or third party vendors. It may also not be possible to successfully enforce or collect upon any indemnities provided to us by third parties. Penalties for failure to comply with certain of these statutes and regulations can become material quickly. For example, under the TCPA, plaintiffs may seek injunctive relief and actual monetary loss or statutory damages of $500 per violation, whichever is greater, and courts may treble the damage award for willful or knowing violations.

Certain states have enacted, or are considering enacting, legislation that places limitations and requirements on businesses that provide referrals for senior housing. Such legislation could make the provision of our senior care services more expensive and less profitable, or prohibit the service provision of those services, which would have an adverse effect on our business and results of operations. Federal and state fraud and abuse laws could be applied to senior care referral sources where referral fees are funded using government funds resulting in significant liability.

We believe that we have structured our business and our online services to comply with applicable laws and regulations as are currently in effect. Because of uncertainties as to the applicability of some of these laws and regulations to online services and, more specifically, to our type of business, and considering that our business has evolved and expanded in a relatively short period of time, and will continue to evolve and develop, we may not always have been, and may not always be, in compliance with all applicable federal, state and foreign laws and regulations. If we are found to be in violation of any applicable laws or regulations, we could be subject to administrative enforcement actions and fines, class action lawsuits, cease and desist orders, and civil and criminal liability. In addition, we could face the revocation of or inability to renew required licenses or registrations, and our advertisers and other business partners could terminate their commercial relationships with us. Liabilities resulting from our failure, or alleged failure, to comply with applicable laws and regulations could materially and adversely affect our business, results of operations and financial condition.

In addition, if applicable laws and regulations are changed or interpreted differently, or if new laws or regulations are enacted, these events could prohibit or substantially alter the content we provide on our websites and the operation of our business, and could result in our advertisers or other business partners ceasing or reducing the business they do with us. These events could materially and adversely affect our business, results of operations and financial condition.

Changes in general economic conditions and changes in market conditions may adversely affect the financial services industry and harm our revenue opportunities, business, financial condition and results of operations.

General shifts in economic trends, reduced availability of commercial credit and increasing unemployment negatively impact the credit performance of commercial and consumer credit. Concerns over the stability of the financial markets and the economy in the past have resulted, and may result in the future, in decreased lending by financial institutions to their customers and to each other. These macroeconomic conditions have affected and may in the future negatively affect our business, financial condition and results of operations. Economic pressure on consumers and businesses and declining confidence in the financial markets would likely cause a decrease in the demand for advertising financial products and services. Additionally, advertising expenditures tend to be cyclical, reflecting overall economic conditions and budgeting and buying patterns. Since we derive most of our revenues from advertising, changes in economic conditions could cause decreases in or delays in advertising spending and would be likely to reduce our revenue and could have a material and adverse effect on our business, financial condition or operating results.

Restrictive covenants in the indenture governing our outstanding senior notes, our revolving credit facility or other future indebtedness may limit our current and future operations, particularly our ability to respond to changes in our business or to pursue our business strategies.

The Indenture, dated as of August 7, 2013 (the “Senior Notes Indenture”), governing our 6.125% senior notes due 2018 (the “Senior Notes”) and our $70.0 million revolving facility (“Revolving Credit Facility”) contain, and any future indebtedness may contain, a number of restrictive covenants that impose significant operating and financial restrictions, including restrictions on our ability to take actions that we believe may be in our interest. The Senior Notes Indenture and the Revolving Credit Facility contain, among other things, our ability to:

- incur additional indebtedness and guarantee indebtedness;
- pay dividends on or make distributions in respect of capital stock or make certain other restricted payments (including redemptions of subordinated indebtedness);
- enter into agreements that restrict distributions from restricted subsidiaries;
- sell or otherwise dispose of assets, including capital stock of restricted subsidiaries;
- enter into transactions with affiliates;
- create or incur liens;
- enter into sale/leaseback transactions;
- merge, consolidate or sell all or substantially all of our assets;
- make investments; and
- change our business operations.

A breach of the covenants or restrictions under the Senior Notes, the Revolving Credit Facility or any agreement governing our future indebtedness could result in a default under the applicable indebtedness. Such default may allow the creditors to accelerate the related debt and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In the event our lenders and note holders accelerate the repayment of our borrowings, we cannot assure that we and our subsidiaries would have sufficient assets to repay such indebtedness.

The restrictions contained in the Senior Notes Indenture and the Revolving Credit Facility could adversely affect our ability to: 
finance our operations;
make needed or desired capital expenditures;
make strategic acquisitions or investments or enter into strategic alliances;
withstand a future downturn in our business or the economy in general;
engage in business activities, including future opportunities, that may be in our interest; and
plan for or react to market conditions or otherwise execute our business strategies.

These restrictions could materially and adversely affect our financial condition and results of operations and our ability to satisfy our obligations under the Senior Notes and the Revolving Credit Facility.

Our substantial indebtedness could adversely affect our financial flexibility and prevent us from fulfilling our obligations under the Senior Notes and Revolving Credit Facility.

We have, and will continue to have, a significant amount of indebtedness. As of December 31, 2016, our total indebtedness was $295.7 million, net of unamortized discount and deferred financing costs, comprised of the Senior Notes in an aggregate principal amount of $300.0 million. As of December 31, 2016, we had no loans outstanding under our Revolving Credit Facility. Our interest expense, including the amortization of original issue discount and deferred financing costs, for the year ended December 31, 2016 was $21.5 million. Our substantial level of indebtedness increases the risk that we may be unable to generate cash sufficient to invest in our business at an appropriate level, thereby making it more difficult to pay amounts due in respect of our indebtedness. Our substantial indebtedness could have other important consequences to you and significant effects on our business. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to other contractual and commercial commitments;
- limit our ability to obtain additional financing amounts to fund working capital, capital expenditures, debt service requirements, execution of our business strategy, or acquisitions and other purposes;
- require us to dedicate a substantial portion of our cash flow from operations to pay principal and interest on our debt, which would reduce the funds available to us for other purposes;
- make us more vulnerable to adverse changes in general economic, industry and competitive conditions, changes in government regulation and changes in our business by limiting our flexibility in planning for, and making it more difficult for us to react quickly to, changing conditions;
- place us at a competitive disadvantage compared to our competitors that have less debt;
- expose us to risks inherent in interest rate fluctuations because some of our borrowings are at variable rates of interest, which could result in higher interest expenses in the event of increases in interest rates; and
- make it more difficult to satisfy our financial obligations, including payments on the Senior Notes and amounts outstanding from time to time under the Revolving Credit Facility.

In addition, the Senior Notes Indenture and the Revolving Credit Facility each contain, and the agreements evidencing or governing other future indebtedness may contain, restrictive covenants that limit our ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our indebtedness.

We may not be able to generate sufficient cash to service all of our indebtedness, including the Senior Notes, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful or if successful, could adversely impact our business.

Our ability to make scheduled payments on or to refinance our debt obligations, including the Senior Notes, depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business, legislative, regulatory and other factors beyond our control. Our debt service obligations are currently $18.6 million per year. In addition, if our Revolving Credit Facility is drawn in the future it would increase the amount of our current debt service obligations. We may be unable to maintain a level of cash flows from operating activities sufficient to permit us to fund our day-to-day operations or to pay the principal, premium, if any, and interest on our indebtedness, including the Senior Notes.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to sell assets or operations, seek additional capital or restructure or refinance our indebtedness, including the Senior Notes. We may not be able to effect any such alternative measures, if necessary, on commercially reasonable terms or at all and, even if successful, such alternative actions may not allow us to meet our scheduled debt service obligations. The Senior Notes Indenture and the Revolving Credit Facility each restrict, and any of our other future debt agreements may restrict, our ability to dispose of assets and use the proceeds from any such dispositions and may also restrict our ability to raise debt or equity capital to be used to repay other indebtedness when it becomes due. We may not be able to consummate those dispositions or to obtain proceeds in an amount sufficient to meet any debt service obligations then due.

In addition, we conduct our operations through our subsidiaries, certain of which may not be guarantors of the Senior Notes or guarantors of our other indebtedness. Accordingly, repayment of our indebtedness, including the Senior Notes, is dependent on the generation of cash flow by our subsidiaries and their ability to make such cash available to us, by dividend, debt repayment or otherwise. Unless they are guarantors of the Senior Notes, our obligations from time to time under the Revolving Credit Facility or any future indebtedness, our subsidiaries do not have any obligation to pay amounts due on the Senior Notes or under the Revolving Credit Facility or to make funds available for such purposes. Our subsidiaries may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness, including the Senior Notes. Each subsidiary is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries. Although the Senior Notes Indenture and the Revolving Credit Facility do, and other future debt agreements may, limit the ability of certain of our subsidiaries to incur consensual restrictions on their ability to pay dividends or make other intercompany payments to us, these limitations are, or in the case of future debt agreements may be, subject to certain qualifications and exceptions. In the event that we do not receive distributions...
from our subsidiaries, we may be unable to make required principal and interest payments on our indebtedness, including the Senior Notes. Our inability to generate sufficient cash flows to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, would materially and adversely affect our financial position and results of operations.

If we cannot make scheduled payments on our debt, we will be in default and, as a result, holders of Senior Notes or our other indebtedness could declare all outstanding principal and interest to be due and payable and we could be forced into bankruptcy or liquidation.

**Despite restrictions in the Senior Notes Indenture and the Revolving Credit Facility, we may still be able to incur additional indebtedness. This could increase the risks associated with our leverage, including the ability to service our indebtedness.**

We may be able to incur additional indebtedness pursuant to the Senior Notes Indenture and the Revolving Credit Facility in the future, including additional secured indebtedness. As of December 31, 2016, we were able to incur up to an additional $330.6 million of indebtedness, of which up to $100.0 million could be secured indebtedness, pursuant to the incurrence tests described in the Senior Notes Indenture and Revolving Credit Facility. Although covenants under the Senior Notes Indenture and the Revolving Credit Facility limit our ability and the ability of our present and future subsidiaries to incur additional indebtedness, these restrictions are subject to a number of qualifications and exceptions and, under certain circumstances, debt incurred in compliance with these restrictions could be substantial.

The Senior Notes Indenture and the Revolving Credit Facility also allow us to incur certain additional secured and unsecured debt and allow our foreign restricted subsidiaries and our future unrestricted subsidiaries to incur additional debt, which would be structurally senior to the Senior Notes and amounts outstanding from time to time under the Revolving Credit Facility. In addition, the Senior Notes Indenture and the Revolving Credit Facility do not prohibit us from incurring obligations that do not constitute indebtedness as defined therein. To the extent that we incur additional indebtedness or such other obligations, the risk associated with substantial additional indebtedness described above, including our possible inability to service our debt will increase.

**We may not receive some or all of the purchase price in connection with the sale of our Insurance business, which could adversely affect our operations.**

The Equity Purchase Agreement (the “Purchase Agreement”) with All Web Leads, Inc. provides that $25.0 million of the $165.0 million aggregate purchase price payable to us as consideration for the sale of our Insurance business to All Web Leads will be paid on the second anniversary of the closing date. Following the adjustment for closing working capital, that deferred consideration was reduced to $23.1 million. If All Web Leads is unable to pay the deferred payment amount in full on or before the second anniversary of the closing date as a result of restrictions under its Revolving Credit Facility, All Web Leads will pay us as much of the deferred payment amount as is permitted under its Revolving Credit Facility and deliver to us a subordinated promissory note in a principal amount equal to the unpaid portion of the deferred payment amount plus interest accrued at one-year LIBOR plus 8.0% per annum from the date of closing on such unpaid portion. The subordinated promissory note will have an interest rate of one-year LIBOR plus 8.0% per annum and will mature on the date that is six months after the maturity date of All Web Leads’ credit facility. Both the deferred compensation payable under the Purchase Agreement and the obligations under promissory note, if it is issued in lieu of cash payment, will be subordinated to All Web Leads’ senior indebtedness.

We have no assurance that All Web Leads can or will perform its payment and other obligations with respect to the deferred compensation payable under the Purchase Agreement or under the promissory note, if it is issued in lieu of cash payment. If All Web Leads is unable to perform its obligations with respect to the deferred compensation payable under the Purchase Agreement or under the promissory note, if it is issued in lieu of cash payment, our receipt of the full amount of the deferred compensation payable under the Purchase Agreement may be delayed or may not be collectible at all. Additionally, we may incur significant legal fees in pursuing collection of the deferred compensation payable under the Purchase Agreement or under the promissory note, if it is issued in lieu of cash payment. Any such delay, additional costs, loss or nonpayment could adversely affect our ability to fund our remaining operations.

**Risks Related to our 2014 Restatement and Other Accounting Issues**

The Company is the subject of an ongoing investigation by the DOJ. The DOJ investigation and its outcome could adversely affect the Company, require significant management time and attention, result in significant legal expenses (including settlement costs) or damages, and cause our business, financial condition, results of operations and cash flows to suffer.

The Company is the subject of an ongoing investigation by the DOJ, which is related to our amendment and restatement of our consolidated financial statements and other financial information (the “Restatement”). We could be subject to fines, settlement costs, penalties, or other sanctions as a result of this investigation. It is not possible to predict when the DOJ investigation will be completed, the final outcome of the investigation, and what if any actions may be taken by the DOJ.

**Our indemnification obligations and advancement and reimbursement of expenses, and limitations of our director and officer liability insurance, could result in significant legal expenses or damages and cause our business, financial condition, results of operations and cash flows to suffer.**

Certain of our former employees have been sued by the SEC for alleged violations of the securities laws relating to accounting issues referenced above and may become defendants in future proceedings relating to such matters. Under Delaware law, our Certificate of Incorporation, our Bylaws and certain indemnification agreements, we may have indemnification obligations to these former employees in relation to these matters, and are advancing legal expenses to these former employees. These indemnity obligations and expense advancements have resulted and may continue to result in significant legal expenses or damages and cause our business, financial condition, results of operations and cash flow to suffer. The former employees receiving expense advancement are obligated to reimburse us under certain circumstances. Those circumstances may not occur, however, or the individuals may refuse or be unable to provide such reimbursement.

While we maintain director and officer liability insurance, following the insurance funding of the class action settlement described in Note 10 (Commitments and Contingencies) to our consolidated financial statements in this report we have exhausted the coverage available to us for the policy year applicable to the class action lawsuit and the SEC and DOJ investigations. As a result, further expenses or liabilities related to these matters, including indemnification and expense advancement obligations, will be borne by us and could have a material and adverse impact on our financial condition, results of operations and cash flows.

**The DOJ investigation and the settled SEC investigation, and other issues in connection with the Restatement could have an adverse**
impact on our business relationships.

Our operations and business rely on our reputation with consumers and relationships with our advertisers, co-brand partners, distribution partners, print partners and other business partners. The DOJ investigation and settled SEC investigation, and other issues in connection with the Restatement, could have an adverse impact on our business relationships with our partners. Among other outcomes, these partners may seek out new partners or rely on their other partners more heavily, and reduce or potentially become unwilling to do business with us, causing our business, financial condition, results of operations and cash flows to suffer.

Risks Related to Ownership of Shares of Our Securities

The Apax Holders (defined below) control a significant interest in us and their interests may conflict with or differ from stockholder interests.

To our knowledge, Ben Holding S.à r.l., which is beneficially owned by Apax US VII, L.P., Apax Europe VII-A, L.P., Apax Europe VII-B, L.P. and Apax Europe VII-1, L.P. (the “Apax Holders”), currently owns approximately 41.9% of our common stock. As a result of its ownership, the Apax Holders have the power, and pursuant to the stockholders agreement, their majority-owned subsidiary Ben Holding S.à r.l. has the contractual right, to nominate a number of directors equal to 30% of the total number of directors. Accordingly, the Apax Holders have significant influence over any decision to approve or reject any transaction that requires the approval of our board of directors or our stockholders, including significant corporate transactions such as business combinations. In addition, following a reduction of the equity owned by the Apax Holders to below 30% of our outstanding common stock, the Apax Holders, through Ben Holding S.à r.l., will retain the right to designate a certain number of designees for our board of directors until the Apax Holders’ ownership percentage falls below 5%. The Apax Holders’ ability to significantly influence our decisions will continue even after selling a portion of their interests in us.

The interests of the Apax Holders could conflict with or differ from other stockholder interests. For example, the concentration of ownership held by the Apax Holders could delay, defer or prevent a change of control of the Company or impede a merger, takeover or other business combination that other stockholders may otherwise support, or approve such transactions notwithstanding opposition from other stockholders. Additionally, Apax Partners is in the business of advising on investments in companies the Apax Holders hold, and they or other funds advised by Apax Partners may from time to time in the future acquire, interests in businesses that directly or indirectly compete with certain portions of our business or are suppliers or customers of ours. They may also pursue acquisitions that may be complementary to our business, and, as a result, these acquisition opportunities may not be available to us.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our corporate headquarters is in New York, New York, where we lease approximately 24,000 square feet of office space under a lease expiring in September 2027.

Our Credit Cards business has its principal facility in Austin, Texas where we lease approximately 22,000 square feet of office space under a lease expiring in November 2018.

Our Banking business has its principal facility in Palm Beach Gardens, Florida, where we lease approximately 26,000 square feet of office space under a lease expiring in January 2027.

Our Senior Care business has its principal facility in San Mateo, California where we lease approximately 8,000 square feet of office space under a lease expiring in December 2019.

In addition to these principal facilities we lease office space at various properties in the United States and sublease a facility in Colchester, England. These leases expire at various times. We use these office properties for administration, sales, operations, and business development. We operate our online network and supporting systems on servers at secure third-party co-locations, including facilities in Atlanta, Georgia, Austin, Texas and several other locations. We believe we can relocate any of our facilities without significant cost or disruption.

Item 3. Legal Proceedings

The information with respect to legal proceedings is incorporated by reference from Note 10 of our Consolidated Financial Statements included in this document.

Item 4. Mine Safety Disclosures

Not applicable
Our common stock has been listed on the NYSE under the symbol “RATE” since June 17, 2011. The following table sets forth for the indicated periods the high and low sales prices per share for our common stock on the NYSE.

<table>
<thead>
<tr>
<th>Fiscal Quarter Ended</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2015</td>
<td>$11.09</td>
<td>$13.57</td>
</tr>
<tr>
<td>June 30, 2015</td>
<td>$10.48</td>
<td>$13.92</td>
</tr>
<tr>
<td>September 30, 2015</td>
<td>$8.87</td>
<td>$11.52</td>
</tr>
<tr>
<td>December 31, 2015</td>
<td>$10.20</td>
<td>$15.80</td>
</tr>
<tr>
<td>March 31, 2016</td>
<td>$6.59</td>
<td>$13.12</td>
</tr>
<tr>
<td>June 30, 2016</td>
<td>$7.11</td>
<td>$9.71</td>
</tr>
<tr>
<td>September 30, 2016</td>
<td>$6.91</td>
<td>$8.73</td>
</tr>
<tr>
<td>December 31, 2016</td>
<td>$7.10</td>
<td>$11.60</td>
</tr>
</tbody>
</table>

Holders of Record

As of December 31, 2016, there were approximately 155 stockholders of record of our common stock, and the closing price of our common stock was $11.05 per share as reported by the NYSE. Because many of our shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

Dividend Policy

We have not declared or paid any dividends on our common stock. We currently intend to retain all of our future earnings, if any, for use in our business and do not anticipate paying any cash dividends for the common stock in the foreseeable future. Our ability to pay dividends on our common stock is currently limited by the covenants of our Senior Notes and Revolving Credit Facility and may be further restricted by the terms of any future debt or preferred securities. Payments of future dividends, if any, will be at the discretion of our board of directors after taking into account various factors, including our business, operating results and financial condition, current and anticipated cash needs, plans for expansion and any legal or contractual limitations on our ability to pay dividends.

Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on an initial investment of $100 in our common stock between December 31, 2011 and December 31, 2016, with the comparative cumulative total return of such amount on the NYSE Market Index and the RDG Internet Composite Index, over the period of December 31, 2011 to December 31, 2016. We have not paid any cash dividends and, therefore, the cumulative total return calculation for us is based solely upon stock price appreciation and not upon reinvestment of cash dividends. Data for the NYSE Market Index and the RDG Internet Composite Index assume reinvestment of dividends. The graph assumes our closing sales price on December 31, 2011 of $21.50 per share as the initial value of our common stock.
The comparisons shown in the graph below are based upon historical data. We caution that the stock price performance shown in the graph below is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN**
Among Bankrate, Inc., the NYSE Composite Index and the RDG Internet Composite Index.

*,$100 invested on 12/31/11 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.

Recent Sale of Unregistered Securities

None.
Company Purchase of Equity Securities

<table>
<thead>
<tr>
<th>Period</th>
<th>Total Number of Shares Purchased</th>
<th>Average Price Per Share</th>
<th>Maximum Number (or Approximate Total Number of Shares That May Yet Be Purchased Under the Plans or Programs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2016 through October 31, 2016</td>
<td>12,230</td>
<td>$8.44</td>
<td>-</td>
</tr>
<tr>
<td>November 1, 2016 through November 30, 2016</td>
<td>4,417</td>
<td>$7.78</td>
<td>-</td>
</tr>
<tr>
<td>December 1, 2016 through December 31, 2016</td>
<td>54,975</td>
<td>$10.50</td>
<td>-</td>
</tr>
</tbody>
</table>

Equity Compensation Plan Information

The following table sets forth certain information relating to the shares of common stock that may be issued under our stock-based incentive plans at December 31, 2016:

<table>
<thead>
<tr>
<th>Plan Category</th>
<th>Number of securities to be issued upon exercise of outstanding options, warrants, rights and restricted stock units</th>
<th>Weighted average exercise price of outstanding options, warrants and rights (excluding restricted stock units)</th>
<th>Number of securities remaining available for future issuance under equity compensation plans (excluding those in first column)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity compensation plans approved by securities holders</td>
<td>4,186,922</td>
<td>16.81</td>
<td>6,249,614</td>
</tr>
<tr>
<td>Total</td>
<td>4,186,922</td>
<td>16.81</td>
<td>6,249,614</td>
</tr>
</tbody>
</table>

For information on the features of the Company’s equity compensation plan, see Management’s Discussion and Analysis of Financial Condition and Results of Operations; Critical Accounting Policies; Stock-Based Compensation and Note 8 in Notes to Consolidated Financial Statements in Item 8.

Item 6. Selected Financial Data

The following table presents our selected historical consolidated financial data. The consolidated statements of operations data for the years ended December 31, 2016, 2015 and 2014 and the consolidated balance sheet data as of December 31, 2016 and 2015 are derived from our audited consolidated financial statements appearing in Item 8 of this Annual Report on Form 10-K. The consolidated statements of operations data for the years ended December 31, 2013 and 2012, and the consolidated balance sheet data as of December 31, 2014, 2013 and 2012, are derived from our audited consolidated financial statements that are not included in this Annual Report on Form 10-K. During 2015, the Company sold its Insurance business and the results of operations, assets and liabilities of that business have been reclassified and presented as a discontinued operation in the following table of selected financial data for all periods presented. The information set forth below should be read in conjunction with our consolidated financial statements and the related notes thereto, included elsewhere in this Annual Report on Form 10-K, and the sections entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$434,161</td>
<td>$371,964</td>
<td>$352,051</td>
<td>$296,976</td>
<td>$246,418</td>
<td></td>
</tr>
<tr>
<td>(Loss) income from operations</td>
<td>(6,017)</td>
<td>$49,236</td>
<td>$36,095</td>
<td>$42,262</td>
<td>$56,835</td>
<td></td>
</tr>
<tr>
<td>Net (loss) income from continuing operations</td>
<td>(34,038)</td>
<td>$16,842</td>
<td>$7,019</td>
<td>(1,732)</td>
<td>26,732</td>
<td></td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(34,134)</td>
<td>(13,346)</td>
<td>5,172</td>
<td>(11,196)</td>
<td>27,045</td>
<td></td>
</tr>
<tr>
<td>Other Financial Data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic net (loss) income per share-continuing operations</td>
<td>$ (0.38)</td>
<td>$0.17</td>
<td>$0.07</td>
<td>$(0.02)</td>
<td>0.27</td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA (1)</td>
<td>$114,797</td>
<td>$127,123</td>
<td>$117,800</td>
<td>$110,364</td>
<td>$94,292</td>
<td></td>
</tr>
<tr>
<td>Cash Flow Data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>$79,756</td>
<td>$86,049</td>
<td>$42,507</td>
<td>$101,887</td>
<td>$49,207</td>
<td></td>
</tr>
<tr>
<td>Net cash (used in) provided by investing activities</td>
<td>(76,184)</td>
<td>$94,498</td>
<td>$82,695</td>
<td>(32,583)</td>
<td>(32,147)</td>
<td></td>
</tr>
<tr>
<td>Net cash (used in) provided by financing activities</td>
<td>(63,999)</td>
<td>(85,256)</td>
<td>(47,736)</td>
<td>77,196</td>
<td>(3,344)</td>
<td></td>
</tr>
</tbody>
</table>
Balance Sheet Data:

- **Cash and cash equivalents**: $176,680
- **Working capital**: $217,087
- **Intangible assets, net**: $192,119
- **Goodwill**: $599,805
- **Total assets**: $1,083,860
- **Long-term debt**: $295,721
- **Total stockholders’ equity**: $689,378

During 2016, 2015, 2014, 2013 and 2012 we recorded $1.8 million, $569,000, $3.6 million, $81,000 and $601,000, respectively, for acquisition, disposition, offering and related expenses, primarily related to the acquisition and integration of acquired businesses with our operations. In 2016 these costs primarily related to the NextAdvisor acquisition. In 2015 these costs primarily related to the acquisitions of Quizzle, LLC and certain assets of Moseo Corporation (SeniorHomes.com) and LoanTek, as well as our disposition of our former Insurance business (see Note 14 to our Consolidated Financial Statements). In 2014 these costs primarily relate to the acquisition of Caring, Inc. and Wallaby Financial Inc.

During 2016, 2015, 2014, 2013 and 2012 we recorded $7.9 million, $11.4 million, $23.6 million, $1.3 million and $1.2 million, respectively, for restatement-related expenses, which include expenses related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation and indemnification obligations.

During 2016 we recorded $43.1 million for the impairment of goodwill within our Banking, pre-realigned Quizzle and Senior Care reporting units and intangible assets within our pre-realigned Quizzle reporting unit.

During 2016 we recorded $6.2 million for contingent deferred compensation and other related expenses related to the NextAdvisor acquisition.

During 2015, 2012 and 2011 we recorded $5.6 million, $267,000 and $75,000, respectively, for restructuring charges to implement best practices and various initiatives to enhance controls, drive efficiency, and further align the Company leadership structure with strategic initiatives.

(1) Adjusted EBITDA represents (loss) income before income taxes, less interest, depreciation and amortization, stock-based compensation, changes in fair value of contingent acquisition consideration, and other items such as loss on extinguishment of debt, legal settlements, acquisition, disposition, offering and related expenses, restructuring charges, any impairment charge, CEO transition costs and costs related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation, purchase accounting adjustments, NextAdvisor contingent deferred compensation, and our operations in China as we are winding down and ceasing its operations. Adjusted EBITDA is a supplemental measure of our performance and is not a measurement of our performance under GAAP and should not be considered as an alternative to net income or other performance measures derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of our liquidity. Management believes that the presentation of Adjusted EBITDA provides useful information to investors regarding the results of our operations because it assists in analyzing and benchmarking the performance and value of our business. Our determination of Adjusted EBITDA may not be comparable to similarly titled measures used by other companies. Following is a reconciliation of Adjusted EBITDA to income (loss) before taxes:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(Loss) income before taxes</td>
<td>$(25,694)</td>
<td>$26,957</td>
<td>$15,279</td>
<td>$126</td>
<td>$31,310</td>
</tr>
<tr>
<td>Interest, net and other expenses</td>
<td>19,677</td>
<td>22,279</td>
<td>20,816</td>
<td>24,961</td>
<td>25,525</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,247</td>
<td>40,843</td>
<td>34,502</td>
<td>31,854</td>
<td>28,322</td>
</tr>
<tr>
<td>Stock-based compensation (a)</td>
<td>19,159</td>
<td>19,417</td>
<td>13,870</td>
<td>9,834</td>
<td>7,638</td>
</tr>
<tr>
<td>Loss on extinguishment of debt</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>17,175</td>
<td>-</td>
</tr>
<tr>
<td>Change in fair value of contingent acquisition consideration</td>
<td>(6,481)</td>
<td>(421)</td>
<td>3,633</td>
<td>17,380</td>
<td>(2,347)</td>
</tr>
<tr>
<td>Acquisition, disposition, offering and related expenses</td>
<td>1,811</td>
<td>569</td>
<td>3,590</td>
<td>81</td>
<td>601</td>
</tr>
<tr>
<td>Restatement-related charges</td>
<td>7,853</td>
<td>11,432</td>
<td>23,586</td>
<td>1,269</td>
<td>1,249</td>
</tr>
<tr>
<td>Legal settlements</td>
<td>5,345</td>
<td>3</td>
<td>1,403</td>
<td>-</td>
<td>874</td>
</tr>
<tr>
<td>China operations (b)</td>
<td>1,682</td>
<td>393</td>
<td>565</td>
<td>882</td>
<td>853</td>
</tr>
<tr>
<td>Restructuring-related expenses</td>
<td>(117)</td>
<td>5,616</td>
<td>-</td>
<td>-</td>
<td>267</td>
</tr>
<tr>
<td>Impairment charges</td>
<td>43,110</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Impact of purchase accounting</td>
<td>6,205</td>
<td>35</td>
<td>556</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other charges (c)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6,802</td>
<td>-</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$114,797</td>
<td>$127,123</td>
<td>$117,800</td>
<td>$110,364</td>
<td>$94,292</td>
</tr>
</tbody>
</table>

(a) Excludes $3.9 million, $3.2 million, $2.3 million, $1.5 million and $796,000 in 2015, 2014, 2013, 2012 and 2011, respectively, related to the disposition of our Insurance business, which is included in net (loss) income from discontinued operation. Excludes $5.8 million related to CEO transition in 2013, which is included in other charges.

(b) Represents the loss from the operations in China, and includes legal and other costs incurred to wind down those operations. The results of China were previously presented as a discontinued operation when it was actively marketed for sale. After the negotiations with the potential buyer did not result in a sale of the business, we initiated the process to wind down the operations.

(c) Other charges include (i) $6.2 million for contingent deferred compensation expense related to the NextAdvisor acquisition for 2016 and (ii) CEO transition costs of $6.8 million (of which $5.8 million is stock-based compensation) for 2013.
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion of our results of operations and financial condition with the financial statements and related notes included elsewhere in this Annual Report on Form 10-K. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs, and that involve numerous risks and uncertainties, including, but not limited to, those described in the “Cautionary Statement Concerning Forward-Looking Statements” and “Risk Factors” sections of this Annual Report on Form 10-K. Actual results may differ materially from those contained in any forward-looking statements. See “Cautionary Statement Concerning Forward-Looking Statements” and “Risk Factors.”

Introduction

Our Company

We are a leading publisher, aggregator and distributor of personal finance content on the Internet. We provide consumers with proprietary, fully researched, comprehensive, independent and objective personal finance editorial content across multiple vertical categories including credit cards, mortgages, deposits, senior care and other personal finance categories.

Our sources of revenue include performance-based advertising, lead generation, display advertising, distribution arrangements and traditional media avenues, such as syndication of editorial content and subscriptions.

Primarily through our CreditCards.com brand and our other owned and operated sites, we provide free credit card marketplaces for consumers seeking a new, different or better credit card. Our credit card marketplaces provide consumers with free content, tools, applications, credit scores, card matching services and comparisons of numerous credit card offers. Via these credit card offers that are largely clicked on by consumers, we provide consumer inquiries to credit card issuers and principally record revenue after the credit card issuers approve the consumer’s credit card application.

Primarily through our Bankrate.com brand, we provide consumer inquiries to advertisers that are listed in our mortgage and deposit rate tables and that hyperlink their listings or provide a phone number. Under this arrangement, advertisers pay Bankrate each time a consumer clicks on that advertiser's hyperlink or calls the phone number. All clicks and calls are screened for fraudulent characteristics in accordance with Interactive Advertising Bureau advertising standards by an independent third party vendor and then charged to the customer’s account. Through our Quizzle.com brand, we provide consumers with tools, services and content that includes credit monitoring, identity theft protection, debt management, credit reports and credit scores, budget planning and credit management techniques.

Primarily through our Caring.com brand, we provide helpful caregiving content, a comprehensive online senior living community directory for the United States, and telephone support and advice from trained Family Advisors to consumers looking for senior care options as well as thousands of original articles, helpful tools, a local directory covering a wide array of other senior caregiving services, and the collective wisdom of an involved online community.

We provide a variety of digital display advertising formats. Our most common digital display advertisement sizes are leader boards and banners, which are prominently displayed at the top, bottom or side rails of a page. We charge for these advertisements based on the number of times the advertisement is displayed or based on a fixed amount for a campaign. Advertising rates may vary depending upon the product areas targeted, geo-targeting, the quantity of advertisements purchased by an advertiser, and the length of time an advertiser runs an advertisement on our online network. We sell to advertisers targeting a specific audience in a city or state and also to national advertisers targeting the entire country.

We also derive revenue through the sale of print advertisements and the distribution (or syndication) of our editorial content. We operate the following reportable segments:

- **Credit Cards** – we present visitors with a comprehensive selection of consumer and business credit and prepaid cards, providing detailed information and comparison capabilities, and host news and advice on personal finance, credit card and bank policies, as well as tools, calculators, products and services to estimate credit scores and card benefits.
- **Banking** – we offer information on rates for various types of mortgages, home lending and refinancing options, specific to geographic location and covering all 50 states; rate information on various deposit products such as money markets, savings and certificates of deposits; and information on retirement, taxes and debt management. This segment also provides original articles on topics related to the housing market and loan refinancing; provides online analytic tools to calculate investment values; and provides content on topics such as retirement 401(k) accounts, Social Security, tax deductions and exemptions, auto loans, debt consolidation and credit risk.
- **Senior Care** – we provide a comprehensive online senior living community directory for the United States, and telephone support and advice from trained Family Advisors to consumers looking for senior care options, as well as thousands of original articles, helpful tools, a local directory covering a wide array of other senior caregiving services, and the collective wisdom of an involved online community.
- **Other** – includes unallocated corporate overhead, the elimination of transactions between segments and the wind down of our China operations.

**2016 Executive Summary**

- Revenues of $434.2 million, a 16.7% increase from 2015, including the results of the NextAdvisor Business since the acquisition of that business in June 2016
- Net loss from continuing operations of $34 million; a $50.9 million decrease from 2015
- Adjusted EBITDA of $114.8 million; a 9.7% decrease from 2015
- Completed the acquisition of the NextAdvisor Business, a leading online source of independent and in-depth research and reviews of credit cards, personal finance and internet services, which we believe will accelerate our credit cards business, broaden our reach and increase the number of ways we can engage with consumers
- Completed the authorized share repurchase program with the repurchase of approximately 5.6 million shares
Initiated the process of winding down our operations in China after negotiations with potential buyers did not result in a transaction.

Realigned our management reporting structure and integrated our Quizzle operations into the Banking segment.

Recorded a $6.6 million goodwill impairment and a $7.5 million intangible asset impairment in our pre-realigned Quizzle reporting unit.

Recorded a $25.0 million impairment charge to goodwill in our Banking reporting unit.

Recorded a $4.0 million impairment charge to goodwill in our Senior Care reporting unit.

Funded $6.1 million to a settlement fund for the $20.0 million court approved settlement of the private securities class action lawsuit; approximately $13.8 million of the settlement was funded by insurance proceeds.

Certain Trends Influencing Our Business

Our business benefits from the secular shift toward consumer use of the Internet to research and shop for personal finance products coupled with increased consumer interest in comparison shopping for such products, and the related shift in advertiser demand from offline to online and toward the targeting of in-market consumers. Our ability to benefit from these trends depends on the strength of our position in the personal finance services markets driven by our brands, proprietary and aggregated content, breadth and depth of personal finance products, distribution, position in search results and monetization capabilities. The key drivers of our business include the number of in-market consumers visiting our online network, the number of page views they generate, the availability of financial products and the demand of our online network advertisers, each of which are correlated to general macroeconomic conditions in the United States. We believe that increases in housing activity and general consumer financial activity and fluctuations in interest rates positively impact these drivers while decreases in these areas, or a deterioration in macroeconomic conditions, could have a negative impact on these drivers.

Key Initiatives

We are focused on the following key initiatives to drive our business:

- increasing visitor traffic to our online network, including enhancing search engine marketing and keyword buying, and expanding display advertising and content marketing on social networks and via direct response advertising;
- traffic optimization and monetization for both desktop and mobile;
- investing in our technical infrastructure to enhance the experience of both consumers and advertisers;
- developing tools and content that result in repeat visits and ongoing engagement by the consumers on our site;
- optimizing the revenue from our cost-per-approval, cost-per-click, cost-per-thousand-impressions and cost-per-call models, and testing and deploying a cost-per-lead model initiative;
- revenue optimization associated with updated site designs and functionality;
- revenue optimization through value-based pricing for our mortgage and deposit products; and
- integrating our acquisitions to maximize synergies and efficiencies.

Revenue

We generate revenue in each of our verticals by connecting consumers with our advertisers. The amount of revenue we generate is a function of the traffic to our owned and operated properties as well as to our partners’ websites and mobile applications and our ability to effectively match these consumers with relevant advertisers.

Credit Card Revenue

In the credit card segment we generate revenue through consumer inquiries by delivery of qualified click-throughs from hyperlinks in credit card listings and qualified phone calls to our advertisers’ application forms. Consumers are presented credit card offers on our owned and operated websites and mobile applications as well as on affiliate websites and mobile applications. Our advertisers pay us a designated transaction fee for either approved applications or completed applications, resulting from those click-throughs or phone calls, which occur after a user clicks on any of their advertisement listings or makes a phone call to the advertiser and then completes an application and in most instances passes the advertiser’s internal approval processes. The designated transaction fee can vary based on the quality of the credit card applicant, the type of credit card that the applicant applies for and the volume of credit card clicks and applicants delivered to the card issuers.

Banking Revenue

In our banking segment we primarily generate revenue through consumer inquiries upon delivery of qualified and reported click-throughs to our advertisers from hyperlinks in tables listing rates for deposits, mortgages or other loan products, or qualified phone calls. Consumers are presented these rate table listings on our owned and operated websites and mobile applications as well as on partner websites and mobile applications. These advertisers pay us a fee for each click-through or phone call, which occurs when a user clicks on any of their advertisement listings or makes a phone call to the advertiser. Each phone call or click-through on an advertisement listing represents a completed transaction once it passes our validation filtering process. We also sell display advertisements on our online network consisting primarily of leaderboards, banners, badges, islands, posters, and skyscraper advertisements on a cost-per-impression basis. We typically charge for these advertisements based on the number of times the advertisement is displayed.

Senior Care Revenue

In our Senior Care segment we mainly generate revenue through move-ins to communities that result from consumer inquiries that are generated on our sites or through our affiliate relationships and are qualified in our call centers. In addition, we sell leads to in-home care providers on a cost-per-lead basis, and we generate some revenue on a subscription basis, whereby senior living communities, in-home care services and other types of senior care providers pay us a flat fee for leads and inclusion in our directory regardless of lead conversion.

Operating Expenses

Cost of Revenue

Cost of revenue represents expenses directly associated with the creation of revenue and costs of fulfilling services. These costs include contractual revenue sharing obligations resulting from our distribution arrangements (“distribution payments”), cost of traffic and lead.
acquisition (primarily search engine marketing expense), display advertising expense, direct response television advertising expense, salaries, editorial costs, research costs, credit card processing fees, and allocated overhead. Distribution payments are made to website operators for visitors directed to our online network which we monetize through advertising, as well as credit card offer clicks that are generated on our affiliated websites and monetized through our issuer network. These costs generally increase proportionately with revenue from our online network and distribution platforms. Editorial costs relate to writers and editors who create original content for our online publications and associates who build web pages. These costs have increased as we have added online publications and co-branded versions of our websites under distribution arrangements. Research costs include expenses related to gathering data on banking and credit products and consist primarily of compensation and benefits along with allocated overhead.

Sales and Marketing
Sales and marketing costs represent expenses associated with expanding brand awareness of our products and services to consumers and include internet advertising, marketing and promotion costs including email marketing and telephone marketing, and include compensation and benefits, sales commissions, allocated overhead, and stock-based compensation expense.

Product Development and Technology
Product development and technology costs represent compensation and benefits related to site development, network systems and telecommunications infrastructure support, programming, new product design and development, other technology costs, and stock-based compensation expense.

General and Administrative
General and administrative expenses represent compensation and benefits for executive, finance and administrative personnel, professional fees, stock-based compensation expense, allocated overhead and other general corporate expenses.

Acquisition, Disposition and Related Expenses
Acquisition, disposition and related expenses represent direct expenses related to our successful acquisitions and divestitures and fees associated with our various offerings.

Depreciation and Amortization
Depreciation and amortization expense includes the cost of capital asset acquisitions spread over their expected useful lives on a straight-line basis. Leasehold improvements are depreciated over the shorter of their estimated useful life or the underlying lease term, not to exceed twenty years. The depreciation periods are as follows:

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture and fixtures</td>
<td>5-7 years</td>
</tr>
<tr>
<td>Computers and software</td>
<td>3-5 years</td>
</tr>
<tr>
<td>Equipment</td>
<td>3 years</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>≤ 20 years</td>
</tr>
</tbody>
</table>

Depreciation and amortization also includes the amortization of intangible assets, consisting primarily of trademarks and domain names, software licenses, customer relationships, agent/vendor relationships, developed technologies and non-compete agreements, all of which were either acquired separately or as part of business combinations recorded under the acquisition method of accounting. The amortization periods for intangible assets are as follows:

<table>
<thead>
<tr>
<th>Intangible Asset</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks and domain names</td>
<td>2-25 years</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>3-15 years</td>
</tr>
<tr>
<td>Affiliate relationships</td>
<td>1-15 years</td>
</tr>
<tr>
<td>Developed technologies</td>
<td>1-10 years</td>
</tr>
</tbody>
</table>

Interest and Other Expenses, Net
Interest and other expenses, net primarily consists of expenses associated with our long-term debt, amortization of debt issuance costs, interest on acquisition-related payments, interest income earned on cash and cash equivalents and other income.

Income Tax (Benefit) Expense
Income tax (benefit) expense consists of federal and state income taxes in the United States and taxes in certain foreign jurisdictions.

Critical Accounting Policies

Critical Accounting Estimates
The preparation of consolidated financial statements in conformity with GAAP requires management to make judgments, estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent gains and losses at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the period. We base our judgments, estimates and assumptions on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions. We evaluate our judgments, estimates and assumptions on a regular basis and make changes accordingly. We believe that the judgments, estimates and assumptions involved in the accounting for revenue recognition, income taxes, the allowance for doubtful accounts receivable, stock-based compensation, useful lives of intangible assets and intangible asset impairment, goodwill impairment, acquisition accounting including the fair value of contingent acquisition consideration, and contingencies have the greatest potential impact on our consolidated financial statements, so we consider these to be our critical accounting policies. Below we discuss the critical accounting estimates associated with these policies. For further information on our critical accounting policies, see Note 2 to our consolidated financial statements included in this Annual Report on Form
Revenue Recognition

Online advertising is the sale of advertising, sponsorships, hyperlinks, and lead generation within our online network through our owned and operated sites, such as CreditCards.com, Bankrate.com and Caring.com. The print publishing and licensing business is primarily engaged in the sale of advertising, mortgage and interest rate tables and licensing of research information.

Consumer Inquiry Revenue

In the credit card segment, we deliver consumer inquiries as a click or phone call to our advertisers and primarily recognize revenue on a per-completed and approved application basis. We also have some card issuer agreements which recognize revenue on a per-completed application basis.

In the banking segment, we deliver consumer inquiries in the form of clicks and calls and recognize revenue monthly based on the number of clicks and calls at a cost-per-click/call for our mortgage and deposit and other banking products.

In the senior care vertical we deliver consumer inquiries to contracting senior care communities after qualifying the inquiries in our call center and matching them to a number of suitable communities. We recognize revenue for each consumer who actually moves into a community for which we provided the initial referral. We also deliver consumer leads to participating in-home care providers, for which we receive fees on a per-lead basis.

We have also entered into revenue sharing arrangements with our vertical content and affiliate partners based on the revenue earned from their consumer inquiries. Revenue is recorded at gross amounts and partnership and affiliate payments are recorded in cost of revenue, pursuant to the provisions of Accounting Standards Codification ("ASC") Topic 605-45, Reporting Revenue Gross as a Principal versus Net as an Agent.

Display Advertising Revenue

Display advertising sales are invoiced monthly at amounts based on specific contract terms, which are predominantly based on the number of impressions delivered to the advertiser.

Print Publishing and Licensing Revenue

We charge for placement in the mortgage and interest rate table for print publication. Advertising revenue is recognized when the rate tables run in a publication. Revenue from the sale of research information is recognized ratably over the contract period.

Stock-Based Compensation

We account for share-based compensation in accordance with ASC 718, Compensation—Stock Compensation. Under the fair value recognition provisions of ASC 718, share-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as an expense on a straight-line basis over the requisite service period, which is generally the vesting period. For awards with performance conditions, the probable outcomes of the performance conditions are assessed and if the conditions are determined as not probable to be achieved, no compensation cost will be recognized. If it is determined that the conditions are probable to be achieved, the related stock-based compensation expense is recognized over the requisite service period of the related awards. The valuation provisions ofASC 718 apply to new grants and to grants that are subsequently modified.

Acquisition Accounting

We have acquired numerous businesses and websites. The acquisition method of accounting requires companies to assign values to assets and liabilities acquired based upon their fair values. In most instances, there is not a readily defined or listed market price for individual assets and liabilities acquired in connection with a business, including intangible assets. The determination of fair value for assets and liabilities in many instances requires a high degree of estimation. The valuation of intangibles assets, in particular, is very subjective. We generally use internal cash flow models. The use of different valuation techniques and assumptions can change the amounts and useful lives assigned to the assets and liabilities acquired, including goodwill and other intangible assets and related amortization expense. We applied ASC 805, Business Combinations to all business combinations.

Goodwill Impairment

The Company records the excess of purchase price over the fair value of the net tangible and identified intangible assets acquired as goodwill. The goodwill is tested for impairment annually, as well as when an event, or change in circumstances, indicates impairment may have occurred. In accordance with ASC 350, Intangibles-Goodwill and Other, we first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not (a likelihood of more than 50%) that the fair value of our reporting unit is less than its carrying amount. We perform this assessment at the reporting unit level annually on October 1st, or more frequently if facts and circumstances warrant a review. If after assessing the qualitative factors we determine that it is not more likely than not that the fair value of the reporting unit is less than the carrying value, then we conclude that we have no goodwill impairment and no further testing is performed; otherwise, we proceed to the two-step process. The first step under the two-step process is to compare the fair value of the reporting unit to its carrying value. If the fair value exceeds the carrying value, goodwill is not impaired and no further testing is performed. The reporting unit fair values are determined by using a weighted valuation approach among three different valuation methodologies consisting of an income approach and a market approach, which is made up of the ‘guideline company method’ and the ‘reference transaction method’. The second step is performed if the carrying value exceeds the fair value. The implied fair value of the reporting unit’s goodwill must be determined and compared to the carrying value of the goodwill. If the carrying value of a reporting unit’s goodwill exceeds its implied fair value, an impairment loss equal to the difference will be recorded.

The Company followed the guidance in ASC 350-20-35 and performed the annual impairment test of goodwill as of October 1, 2016. In performing that test, it was noted that the carrying value of the Senior Care reporting unit exceeded its fair value. As a result, the second step was required to be performed. The implied fair value of goodwill was determined in the same manner as the amount of goodwill recognized in a business combination. We have determined the fair value of the reporting unit using the income and market approaches. We also determined the fair value of developed technology, domain names and customer relationships, using relevant market related data. We recorded $4.0 million for impairment of goodwill of the Senior Care reporting unit for the year ended December 31, 2016.

During 2016, management revised the strategy of its Quizzle reporting unit to focus its technology resources primarily on enhancing the
user experience of the products and services provided by the Banking segment through greater personalization, and realigned its management reporting structure by integrating the Quizzle operations and reporting unit into the Banking segment. Management determined that the revised strategy, reporting structure and the performance of initiatives utilizing Quizzle resources, each represented triggering events for impairment testing at the pre-realigned Quizzle reporting unit. As a result we completed Step 1 analysis of goodwill during the third quarter of 2016, which indicated that the fair value was lower than the reporting unit’s carrying value, and recorded an estimated goodwill impairment of $4.2 million in the third quarter of 2016. During the fourth quarter 2016, we completed Step 2 of the analysis, recording an additional goodwill impairment of $2.4 million for the pre-realigned Quizzle reporting unit for the year ended December 31, 2016. The impairment amount was determined using the income and market approaches, and was based on a number of factors including the estimated fair value of developed technology, trademarks and customer relationships, as well as relevant market related data.

During the second quarter 2016, management noted that the operating results of its Banking reporting unit had begun to track below plan, primarily due to macroeconomic trends impacting its deposit and display advertising businesses. This triggering event resulted in impairment testing as of June 30, 2016 determined using the income and market approaches. It was concluded that the reporting unit’s goodwill was impaired and we recorded a $25.0 million impairment of its goodwill in the second quarter of 2016. The Banking reporting unit was tested for impairment again during our annual assessment and it was concluded that no impairment had occurred.

During 2015, it was determined that a triggering event had occurred in our former Insurance business unit. We recorded a $35.0 million charge for the impairment of goodwill within our Insurance reporting unit resulting from the difference between the net book value of the business segment and the estimated fair value of the business. During the annual goodwill impairment testing, on October 1, 2015, we performed the assessment for all reporting units, including Step 2 testing for the Insurance reporting unit, and concluded that there was no impairment of goodwill, including any further impairment of the Insurance reporting unit. During the fourth quarter 2015, the Insurance business was disposed and as such, the results of the business are presented as a discontinued operation for all periods presented.

Impairment of Long-Lived Assets including intangible assets with finite lives

ASC 360, Property, Plant and Equipment, requires that long-lived assets including intangible assets with finite lives be amortized over their estimated useful life and reviewed for impairment. We continually monitor events and changes in circumstances that could indicate carrying amounts of our long-lived assets including intangible assets with finite lives may not be recoverable. When such events or changes in circumstances occur, we assess the recoverability of such assets by determining whether the carrying value will be recovered through the undiscounted expected future cash flows. If the future undiscounted cash flows are less than the carrying amount of such assets, we recognize an impairment loss based on the excess of the carrying amount over the fair value of the assets.

As noted above, during the third quarter 2016, management realigned its management reporting structure by integrating the Quizzle operations into the Banking reporting unit, and revised the strategy of the Quizzle reporting unit to focus its technology resources primarily on enhancing the user experience of the products and services provided by the Banking segment through greater personalization. These changes, along with a change in the estimated useful life of Quizzle’s developed technology intangible asset and the performance of initiatives utilizing Quizzle resources, represented a triggering event for impairment testing at the pre-realigned Quizzle reporting unit. It was determined that the intangible assets of our pre-realigned Quizzle reporting unit were impaired and we recorded a $7.5 million impairment to the pre-realigned Quizzle reporting unit intangible assets.

We performed impairment evaluations in 2015 and 2014, and concluded that there was no impairment of long-lived assets including intangible assets with finite lives.

Allowance for Doubtful Accounts

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability or unwillingness of our customers to make required payments. We look at historical write-offs and sales growth when determining the adequacy of the allowance. This estimate is inherently subjective because our estimates may be revised as more information becomes available. Should the financial condition of our customers deteriorate, resulting in an impairment of their ability to make payments, or if the level of accounts receivable increases, the need for possible additional allowances may be necessary. Any additions to the allowance for doubtful accounts are recorded as bad debt expense and included in general and administrative expenses.

Contingencies

As discussed in Note 10 to our consolidated financial statements, included elsewhere in this Annual Report on Form 10-K, various legal proceedings are pending against us. We record provisions in the consolidated financial statements for pending litigation when we determine that an unfavorable outcome is probable and the amount of the loss can be reasonably estimated. Except as discussed in Note 10, at the present time, while it is reasonably possible that an unfavorable outcome in a case may occur, (i) management has concluded that it is not probable that a loss has been incurred; (ii) management is unable to estimate the possible loss or range of loss that could result from an unfavorable outcome; and (iii) accordingly, management has not provided any amounts in the consolidated financial statements for unfavorable outcomes, if any. Legal defense costs are expensed as incurred.

Income Tax Expense (Benefit)

We account for income taxes in accordance withASC 740, Income Taxes. Under this method, deferred income taxes are determined based on the estimated future tax effects of differences between the financial statement and tax basis of assets and liabilities given the provisions of enacted tax laws. Deferred income tax provisions and benefits are based on changes to the assets or liabilities from year to year. In providing for deferred taxes, we consider tax regulations of the jurisdictions in which we operate, estimates of future taxable income, and available tax planning strategies. If tax regulations, operating results, or the ability to implement tax-planning strategies vary, adjustments to the carrying value of the deferred tax assets and liabilities may be required. Valuation allowances are based on the “more likely than not” criteria ofASC 740.

The accounting for uncertain tax positions guidance underASC 740 requires that we recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more likely than not threshold, the amount recognized in the consolidated financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority. We recognize interest and penalties on uncertain tax positions as a component of income tax expense. If our assessment of whether a tax position meets or does not meet the more likely than not threshold were to change, adjustments to income tax benefits may be required.

Results of Operations
The following is our analysis of the results of operations for the periods covered by our consolidated financial statements. This analysis should be read in conjunction with our consolidated financial statements, including the related notes to the consolidated financial statements. A detailed discussion of our accounting policies and procedures is set forth in the applicable sections of this analysis. Other accounting policies are contained in Note 2 to the consolidated financial statements.

Our chief operating decision maker, the Company’s Chief Executive Officer, manages, assesses performance and allocates resources for our businesses based upon separate financial information for each of our operating segments (see Note 6 to our Consolidated Financial Statements for further information). In identifying the reportable segments, we also considered the nature of the services provided by our operating segments and other relevant factors. Senior Care does not meet the quantitative thresholds for a reportable segment, however management believes that information about the segment should be separately disclosed as it is useful to the readers of the consolidated financial statements.

During 2016, management realigned its reporting structure by integrating the Quizzle operations into the Banking segment and revised the strategy of our Quizzle operations to focus its technology resources primarily on enhancing the user experience of the products and services provided by the Banking segment through greater personalization. Segment results reported for all periods since the acquisition of Quizzle in 2015 have been revised to reflect such change.

Our operations in China were previously presented as a discontinued operation, as we were marketing them for sale. During the first half of 2016 we could not come to terms with the potential buyers of the business, negotiations ended, and the plan to sell the business was abandoned. It was then determined to start the process of winding down and closing the operations in China, a process which, based on local requirements and regulations, is not expected to be completed until 2018. The operations of China are now included in our continuing operations for all periods presented.

Management evaluates the operating results of each of the Company’s operating segments based upon revenue and “Adjusted EBITDA”, which we define as income from continuing operations before depreciation and amortization; interest; income taxes; changes in fair value of contingent acquisition consideration; stock-based compensation and other items such as loss on extinguishment of debt, legal settlements, acquisition, disposition and related expenses; restructuring charges; any impairment charges; NextAdvisor contingent deferred compensation for the acquisition; costs related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation and indemnification obligations; purchase accounting adjustments; and our operations in China as we are winding down and ceasing its operations. The Company’s presentation of Adjusted EBITDA, a non-GAAP measure, may not be comparable to similarly titled measures used by other companies.

The following table displays our results for the respective periods expressed as a percentage of total revenue:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Costs and expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>52%</td>
<td>47%</td>
<td>51%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Product development and technology</td>
<td>7%</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>18%</td>
<td>17%</td>
<td>17%</td>
</tr>
<tr>
<td>Legal settlements</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Acquisition, disposition and related expenses</td>
<td>0%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Restructuring-related expenses</td>
<td>0%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>Changes in fair value of contingent acquisition consideration</td>
<td>(1%)</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Impairment charges</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>10%</td>
<td>11%</td>
<td>10%</td>
</tr>
<tr>
<td>Total costs and expenses</td>
<td>101%</td>
<td>87%</td>
<td>90%</td>
</tr>
<tr>
<td>(Loss) income from operations</td>
<td>(1%)</td>
<td>13%</td>
<td>10%</td>
</tr>
<tr>
<td>Interest and other expenses, net</td>
<td>5%</td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>(Loss) income before taxes</td>
<td>(6%)</td>
<td>7%</td>
<td>4%</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>2%</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Net (loss) income from continuing operations</td>
<td>(8%)</td>
<td>5%</td>
<td>2%</td>
</tr>
<tr>
<td>Net loss from discontinued operation, net of income taxes</td>
<td>0%</td>
<td>(8%)</td>
<td>(1%)</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(8%)</td>
<td>(4%)</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Year Ended December 31, 2016 Compared to Year Ended December 31, 2015**

**Revenue**

Total revenue was $434.2 million and $372.0 million for the years ended December 31, 2016 and 2015, respectively, representing an increase of $62.2 million or 16.7%, and includes the results of the NextAdvisor business acquired in June 2016. This increase is primarily due to higher consumer inquiry revenue on our owned and operated websites, partially offset by lower third-party affiliate, display and print revenues.

Revenues from our Credit Cards segment increased $73.0 million or 30.2% to $314.9 million in 2016 compared to 2015. The Banking segment, total revenue of $101.4 million in 2016 was $8.2 million or 7.5% lower as compared to 2015. Senior Care revenues decreased
$375,000 to $23.5 million in 2016. Revenues in Other, which includes the eliminations of intra-segment revenues, decreased $2.2 million from 2015 due to higher intra-segment revenue eliminations. See our segment discussion below for more information on our segment results.

**Costs and Expenses**

**Cost of Revenue**

Cost of revenue for the year ended December 31, 2016 of $227.5 million was $54.2 million higher than the year ended December 31, 2015. This increase was primarily due to $45.5 million in higher paid marketing expense, $5.2 million of higher employee compensation, benefit and incentive compensation expense, $756,000 increase in information technology spend, $504,000 increase in professional fees and $497,000 in additional stock compensation expense.

**Sales and Marketing**

Sales and marketing expenses for the year ended December 31, 2016 of $17.5 million were $1.7 million higher than the year ended December 31, 2015, primarily due to $1.0 million additional information technology spend, $973,000 increased consulting and professional fees, $285,000 higher compensation, benefits and incentive compensation, and $242,000 in higher sales commissions, partially offset by $686,000 in decreased stock compensation expense and $644,000 lower marketing and advertising spend.

**Product Development and Technology**

Product development and technology costs for the year ended December 31, 2016 of $29.3 million were $5.6 million higher than the comparable period in 2015, primarily due to $4.0 million in higher compensation and benefit costs and incentive compensation expense, $1.1 million higher information technology costs, $610,000 higher stock-based compensation expense, $395,000 higher web analytic costs and $120,000 increased outside contract labor.

**General and Administrative**

General and administrative expenses for the year ended December 31, 2016 of $79.9 million were $16.5 million higher than the year ended December 31, 2015, primarily due to $6.5 million in higher employee compensation and benefit costs, $6.2 million in deferred compensation expenses related to NextAdvisor acquisition, a $3.1 million increase in contract labor and consulting costs, $2.1 million increase in incentive compensation, an increase of $1.3 million in professional fee expenses, mainly for accounting services, and a $2.0 million increase in other expenses including travel, insurance, facility and other costs, partially offset by $3.6 million lower expenses related to the restatement, $680,000 decreased stock-based compensation expense and $450,000 lower technology related expenses.

**Acquisition, Disposition, Offering and Related Expenses**

Acquisition, disposition, offering and related expenses for the year ended December 31, 2016 were $1.8 million as compared to $569,000 for the same period in 2015. For the year ended December 31, 2016 these expenses related to the NextAdvisor Acquisition and during the year ended December 31, 2015 were related to our several small acquisitions and early costs leading to our disposition of our Insurance business.

**Change in Fair Value of Contingent Acquisition Consideration**

Change in fair value of contingent acquisition consideration for the year ended December 31, 2016 was of a credit of $6.5 million compared to a credit of $421,000 for the same period in 2015 due to reduction of the earnout accrual for lower projected future contingent payments related to the operating results of acquired businesses not projected to achieve performance targets.

**Impairment Charges**

During the year ended December 31, 2016, we recorded an impairment charge of $43.1 million, consisting of $25.0 million, $6.6 million and $4.0 million for impairment of goodwill to our Banking, pre-realigned Quizzle and Senior Care reporting units, respectively, and $7.5 million for the impairment of intangible assets to our pre-realigned Quizzle reporting unit.

**Depreciation and Amortization**

Depreciation and amortization expense for the year ended December 31, 2016 of $42.2 million was $1.4 million higher than the same period in 2015 due to $1.9 million additional depreciation expense of our fixed assets, partially offset by a $569,000 decrease in amortization expense, resulting primarily from the $1.8 million charge taken in 2015 to fully amortize certain domain names that were made dormant during the year.

**Interest and Other Expenses, net**

Interest and other expenses, net of $19.7 million for the year ended December 31, 2016 decreased $2.6 million from prior year primarily due the interest income of approximately $2.5 million, primarily recognized on our deferred receivable for the sale of our Insurance business in 2015.

**Income Tax Expense**

Our effective tax rate on continuing operations was an expense of (32.5%) for the year ended December 31, 2016 compared to an expense of 37.5% for the year ended December 31, 2015. The change was principally due to a higher charge taken for stock compensation and the tax non-deductibility of a portion of the GAAP goodwill impairment charge over a loss before income taxes in 2016.

**Net Loss from Discontinued Operation**

Net loss from discontinued operation for the year ended December 31, 2016 includes costs related to the sale of our former Insurance business and in 2015 was primarily due to a $35.0 million charge for the impairment of goodwill at our former Insurance business resulting from the difference between the net book value of the business segment and the estimated fair value of the business and an $11.9 million charge for sales tax expense in the Insurance business, partially offset by a $14.1 million tax benefit, and the $8.6 million gain on sale, net of tax, of the Insurance business, which was sold in 2015.

Following is a detailed discussion of our segment results of operations:
Adjusted EBITDA decreased $8.9 million (26.9%), primarily due to the decrease in revenues. Expenses included in Adjusted EBITDA increased $668,000 from the prior year. Cost of revenue decreased $633,000, primarily due to lower partner revenue share payments and paid marketing expense. Sales and marketing expenses increased $1.9 million, primarily due to increased compensation, benefits and incentive compensation, and increased information technology spending. Product development costs decreased by $43,000. General and administrative expenses were $597,000 lower due primarily to information technology and facility costs, partially offset by increased

Less:

Interest and other expenses, net (C) 19,677 22,279
Depreciation and amortization 42,247 40,843
Changes in fair value of contingent acquisition consideration (6,481) (421)
Stock-based compensation expense (D) 19,159 19,417
Legal settlements 5,345 3
Acquisition, disposition and related expenses 1,811 569
Restructuring charge (117) 5,616
Impairment charges (E) 43,110 -
Restatement-related expenses (F) 7,853 11,432
NextAdvisor contingent deferred compensation (G) 6,205 -
China operations (H) 1,682 393
Impact of purchase accounting - 35
(Profit) income before income taxes $ (25,694) $ 26,957

(A) Includes the results of NextAdvisor since its acquisition in June of 2016.
(B) During the third quarter 2016, management realigned its management reporting structure by integrating the Quizzle operations into the Banking segment. All segment results reported for the years ended December 31, 2016 and 2015 have been revised to reflect such change.
(C) The year ended December 31, 2016 includes the implied interest income related to the deferred receivable from the sale of our former Insurance business and the year ended December 31, 2015, includes a $703,000 charge related to the exit of an office lease.
(D) Excludes approximately $3.9 million of stock based compensation costs for the year ended December 31, 2015 related to the divestiture of our Insurance business during 2015. The costs related to our Insurance business are presented as a discontinued operation.
(E) During the year ended December 31, 2016, $25.0 million, $6.6 million and $4.0 million was recorded for goodwill impairment to our Banking, pre-realigned Quizzle and Senior Care reporting units, respectively, and $7.5 million was recorded for intangible asset impairment to our pre-aligned Quizzle reporting unit.
(F) Restatement charges include costs related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation and indemnification obligations.
(G) Represents contingent deferred compensation expense related to the NextAdvisor acquisition.
(H) Represents the loss from the operations in China, and includes legal and other costs incurred to wind down those operations. The results of China were previously presented as a discontinued operation when it was actively marketed for sale. After the negotiations with the potential buyer did not result in a sale of the business, we initiated the process to wind down the operations.

Credit Cards
Revenue increased $73.0 million (30.2%) for the year ended December 31, 2016 compared with 2015. Approximately $29.1 million of the revenue growth came from NextAdvisor, which was acquired in June 2016. Excluding the impact of the acquisition, consumer inquiry revenue from our owned and operated sites grew by $40.2 million (23.4%). About 65% of consumer inquiry revenue growth resulted from higher pricing and sales conversion with the remaining from increased consumer volume. Other revenue, which is largely comprised of revenue generated through third-party affiliates, increased approximately 5.3%. Affiliate revenues yield substantially lower margins compared to revenues from owned and operated sites.

Adjusted EBITDA increased $4.0 million (3.5%) due to increased revenues. Expenses increased primarily due to the inclusion of NextAdvisor, since its acquisition in June 2016, and higher paid marketing expense. Cost of revenue increased $57.4 million, mainly due to increased paid marketing expense and affiliate revenue share payments. Sales and marketing expense increased by $812,000. Product development cost increased by $4.9 million primarily due to higher compensation and incentive expense. General and administrative expenses were $5.9 million higher, mainly attributed to higher employee compensation and incentive expenses, increased consulting costs and higher facility and other costs.

Banking
Revenue decreased $8.2 million (7.5%) for the year ended December 31, 2016 compared with 2015. Of the total revenue decrease, consumer inquiry revenues generated through our rate tables decreased by $1.9 million (2.7%) as growth in mortgage and other products was offset by lower advertiser demand in our deposit vertical compared to prior year. Overall unit pricing was 19.4% lower due to our year-long efforts to align the price of each click with the value received by the advertiser, offset by a 20.8% increase in volume due to growth in our mortgage vertical. Other revenue, primarily from sold advertising impressions, was down approximately $6.3 million versus 2015.

Adjusted EBITDA decreased $8.9 million (26.9%), primarily due to the decrease in revenues. Expenses included in Adjusted EBITDA increased $668,000 from the prior year. Cost of revenue decreased $633,000, primarily due to lower partner revenue share payments and paid marketing expense. Sales and marketing expenses increased $1.9 million, primarily due to increased compensation, benefits and incentive compensation, and increased information technology spending. Product development costs decreased by $43,000. General and administrative expenses were $597,000 lower due primarily to information technology and facility costs, partially offset by increased

### Revenue Table

<table>
<thead>
<tr>
<th></th>
<th>Year ended December 31, 2016</th>
<th>Year ended December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$314,853</td>
<td>$241,854</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$117,612</td>
<td>$113,644</td>
</tr>
<tr>
<td>Credit Cards (A)</td>
<td>$101,440</td>
<td>$109,677</td>
</tr>
<tr>
<td>Banking (B)</td>
<td>23,480</td>
<td>23,855</td>
</tr>
<tr>
<td>Senior Care</td>
<td>(5,612)</td>
<td>(3,422)</td>
</tr>
<tr>
<td>Other</td>
<td>(27,964)</td>
<td>(19,980)</td>
</tr>
<tr>
<td>Total Company</td>
<td>$434,161</td>
<td>$371,964</td>
</tr>
<tr>
<td></td>
<td>114,797</td>
<td>127,123</td>
</tr>
</tbody>
</table>
compensation, benefits and incentive compensation expense.

Senior Care

Revenues decreased $375,000 (1.6%) for the year ended December 31, 2016 compared with 2015. Senior housing referral revenue grew $1.3 million (7%) due to an increase in the number of move-ins and the average referral fee per move-in, despite losing our largest senior housing client in January 2016. The communities lost with that client’s departure were more than replaced in our directory of providers, but by smaller, lower-converting senior housing providers. In the latter part of 2016 we conducted a pilot program with a small number of communities for this large senior housing client, and at year-end we won back a significant chunk of their business. In-home care referral revenue grew $289,000 with the Company’s launch of its new home care cost-per-lead business in the summer of 2016. Subscription revenue declined $889,000 (36%) as senior housing clients were converted to referral contracts and in-home care clients were converted to cost-per-lead agreements. The loss of our largest senior housing client also adversely impacted subscription revenue. Advertising revenue was down $1.1 million (58%) following a decision to de-emphasize low margin pharmaceutical ad campaigns starting in 2016.

Adjusted EBITDA increased $594,000 primarily due to a $1.5 million decrease in cost of revenue related to lower paid marketing expense. Sales and Marketing expense increased $585,000 primarily due to compensation, benefits and incentive compensation. Product development increased $108,000 and general and administrative expenses decreased $243,000.

Other

The Other segment includes general corporate expenses and intra-segment eliminations. Revenue for the year ended December 31, 2016 compared with 2015 decreased $1.4 million excluding China, while Adjusted EBITDA excluding China operations, which are being wound down, decreased $8.0 million. The revenue decrease is attributed primarily to higher intra-segment revenue eliminations. The decrease in Adjusted EBITDA was primarily due to $3.5 million in compensation, benefits and incentive compensation expense, $2.3 million in increased consulting costs, $1.7 million higher accounting and other professional fees, and higher facility and information technology costs.

Year Ended December 31, 2015 Compared to Year Ended December 31, 2014

Revenue

Total revenue increased 5.7% to $372.0 million from $352.1 million for the years ended December 31, 2015 and 2014, respectively. This increase is primarily due to higher consumer inquiry revenue on our owned and operated websites, partially offset by lower third-party affiliate, display and print revenues. Revenues from our Credit Cards segment increased $15.0 million or 6.6% to $241.9 million in 2015 compared to 2014. Within the Banking segment, total revenue of $109.7 million in 2015 was 7.4% lower as compared to 2014. Senior Care revenues grew $13.6 million to $23.9 million in 2015 compared to a partial year of results after the business was acquired in May 2014. Other revenues increased $163,000, representing primarily lower intra-segment revenue eliminations. See our segment results discussion for more information.

Costs and Expenses

Cost of Revenue

Cost of revenue for the year ended December 31, 2015 of $173.3 million was $7.2 million lower than the same period in 2014. This decrease was primarily due to reduction of $28.6 million in distribution payments, mainly to our online partners and affiliates as a result of lower online revenue from affiliate sites, partially offset by $13.3 million in higher paid marketing expense, $4.3 million in higher employee compensation and benefit expense, $2.8 million increase in web analytic marketing costs and $17,000 additional stock compensation expense.

Sales and Marketing

Sales and marketing expenses for the year ended December 31, 2015 of $15.8 million were $1.1 million higher than the year ended December 31, 2014, primarily due $869,000 in higher stock-based compensation expense, $343,000 higher compensation and benefits and $174,000 higher sales commissions, partially offset by lower marketing and advertising spend.

Product Development and Technology

Product development and technology costs for the year ended December 31, 2015 of $23.7 million were $6.9 million higher than the comparable period in 2014, primarily due to $3.5 million in higher compensation and benefit costs, $1.3 million higher stock-based compensation expense, $644,000 increased outside contract labor, $406,000 higher web analytic costs and $253,000 higher information technology costs.

General and Administrative

General and administrative expenses for the year ended December 31, 2015 of $63.3 million, were $2.5 million higher than the 2014, due primarily to $5.1 million in higher employee compensation and benefit costs, $3.3 million increased stock-based compensation expense, an increase of $1.6 million in professional fee expenses, mainly for accounting services, a $920,000 increase in contract labor and consulting costs, $840,000 higher technology related expenses and a $3.1 million increase in other expenses including travel, insurance, facility and other costs, partially offset by $12.2 million lower expenses related to the restatement, primarily related to the accrual of $15.0 million for the settlement with the SEC recorded in the third quarter 2014.

Acquisition, Disposition, Offering and Related Expenses

Acquisition, disposition, offering and related expenses for the year ended December 31, 2015 were $569,000 as compared to $3.6 million for the same period in 2014. During the year ended December 31, 2015 these expenses and fees decreased due to lower acquisition activity and during 2014 they were primarily related to our acquisition of Caring.

Change in Fair Value of Contingent Acquisition Consideration

Change in fair value of contingent acquisition consideration for the year ended December 31, 2015 was a credit of $421,000 compared to an expense of $3.6 million for the same period in 2014 due to fewer contingent earnouts required to be accrued for and a reduction of the accrual due to lower projected future contingent payments related to the operating results of acquired businesses.

Depreciation and Amortization
Depreciation and amortization expense for the year ended December 31, 2015 of $40.8 million was $6.3 million higher than the same period in 2014 primarily due to a $3.8 million increase in amortization expense, resulting primarily from intangibles acquired during 2015, and full year of amortization of intangibles acquired during 2014 and a $1.9 million charge to fully amortize certain domain names that were made dormant during the year, and additional depreciation expense of our fixed assets.

**Interest and Other Expenses, net**

Interest and other expenses, net of $22.3 million for the year ended December 31, 2015 increased $1.5 million from prior year primarily due to the amortization of debt holder consent fees incurred in connection with the delayed 2014 financial statements due to the restatement and a charge related to the exit of an office lease.

**Income Tax Expense**

Our effective tax rate on continuing operations was 37.5% and 54.1% for the years ended December 31, 2015 and 2014 respectively. The change was principally due to the non-deductibility of the SEC settlement.

**Net Loss from Discontinued Operation**

Net loss from discontinued operation for the year ended December 31, 2015 increased $28.3 million from the prior year, primarily due to a $35.0 million charge for the impairment of goodwill at our Insurance business segment resulting from the difference between the net book value of the business segment and the estimated fair value of the business and an $11.9 million charge for sales tax expense in the Insurance business, partially offset by a $14.1 million tax benefit, and the $8.6 million gain on sale, net of tax, of the Insurance business, which was sold on December 29, 2015.

Following is a detailed discussion of our segment results of operations:

<table>
<thead>
<tr>
<th>Revenues</th>
<th>Adjusted EBITDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In thousands)</td>
<td>Year ended</td>
</tr>
<tr>
<td>Credit Cards</td>
<td>December 31, 2015</td>
</tr>
<tr>
<td></td>
<td>December 31, 2014</td>
</tr>
<tr>
<td>Banking (A)</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Senior Care</td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Company</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Less:

- Interest and other expenses, net
- Depreciation and amortization
- Changes in fair value of contingent acquisition consideration
- Stock-based compensation expense (B)
- Legal settlements
- Acquisition, disposition, offering and related expenses
- Restructuring charges
- Restatement-related expenses (C)
- China operations (D)
- Impact of purchase accounting

Net income from continuing operations

$(26,957) $15,279

(A) During the third quarter 2016, management realigned its management reporting structure by integrating the Quizzle operations into the Banking segment. All segment results reported for the year ended December 31, 2015 have been revised to reflect such change.

(B) Excludes approximately $3.9 million and $3.2 million of stock-based compensation costs for the years ended December 31, 2015 and 2014, respectively, related to the divestiture of our Insurance business during 2015. The costs related to our Insurance business are presented as a discontinued operation.

(C) Restatement charges include costs related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation.

(D) Represents the loss from operations in China, and includes legal and other costs incurred to wind down those operations. The results of China were previously presented as a discontinued operation when it was actively marketed for sale. After the negotiations with the potential buyer did not result in a sale of the business, we initiated the process to wind down the operations.

**Credit Cards**

Revenue increased $15.0 million (6.6%) for the year ended December 31, 2015 compared with 2014. Of the total revenue growth, consumer inquiry revenues from our owned and operated sites grew by $48.3 million (39.1%). About 54% of consumer inquiry revenue growth came from higher inquiry volume with the remaining increase through better monetization. Inquiry volume was partially driven by the April 2015 mobile responsive redesign of our creditcards.com site. Monetization growth was partly driven by higher advertising and marketing spend by credit card issuers through our owned and operated sites. However, overall revenue growth was negatively impacted by lower affiliate revenues. During the year, certain issuers and third party affiliates shifted their monetization links to other competing networks. Affiliate revenues yield substantially lower margins compared to revenues from owned and operated sites.

Adjusted EBITDA increased $21.4 million (23.2%) due to a combination of increased revenues and a $6.4 million decrease in expenses included in Adjusted EBITDA. The decrease in expenses was primarily due to an $11.4 million decrease in cost of revenue, mainly related to lower affiliate revenue share payments. Sales and marketing expense decreased by $84,000. Product development cost increased by $1.9 million primarily due to higher compensation and incentive expense, increased professional fees and other costs. General and
Administrative expenses were $3.2 million higher, mainly attributed to higher employee compensation and incentive expenses, increased consulting costs and higher travel, facility and other costs.

Banking
Revenue decreased $8.8 million (7.4%) for the year ended December 31, 2015 compared with 2014. Consumer inquiry revenues generated through our rate tables decreased by $5.5 million (7.7%) primarily due to lower advertiser demand on our mortgage and deposit tables which resulted in a fewer consumer inquiries and lower monetization. This lower demand also impacted display revenue as many of the largest display advertisers on the Bankrate network also participate on our rate tables. As a result, other revenue, primarily from sold advertising impressions, was down approximately $3.2 million versus 2014. 2015 results include the results of Quizzle, which we acquired in 2015.

Adjusted EBITDA decreased $11.8 million (26.3%), primarily due to decreased revenues. Expenses included in Adjusted EBITDA increased $3.0 million from the prior year and include the expenses of Quizzle, acquired in 2015. Cost of revenue decreased $2.7 million, mainly related to lower partner revenue share payments. Sales and marketing expenses were $338,000 lower, primarily due to $274,000 lower sales commissions. Product development costs increased by $3.4 million, due primarily to higher employee compensation and benefits expense, and outside contract labor costs. General and administrative expenses were $2.7 million higher due primarily to employee compensation and benefit expense, information technology expenses and facility costs.

Senior Care
Revenues increased $13.6 million (131.6%) for the year ended December 31, 2015 compared with 2014 due partially to a full year of operations during 2015 after the mid-2014 acquisition of Caring and the acquisition of Senior Homes during 2015. In addition, the number of senior living communities contracted on a referral fee basis increased 50%, leading to a higher number of move-ins on an annualized basis, and the average referral fee increased by 18%.

Adjusted EBITDA increased $3.0 million primarily due to revenue growth as expenses included in Adjusted EBITDA increased approximately $10.1 million, primarily due to a full year of operations and the acquisition of Senior Homes.

Other
Other includes general corporate expenses and intra-segment eliminations. Revenue for the year ended December 31, 2015 compared with 2014 increased $163,000 due to primarily to lower intra-segment eliminations of segment revenue sharing. Adjusted EBITDA decreased by $3.3 million, due to higher corporate expenses.

Liquidity and Capital Resources

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$176,680</td>
<td>$237,204</td>
<td>$(60,524)</td>
</tr>
<tr>
<td>Working capital</td>
<td>$217,087</td>
<td>$261,276</td>
<td>$(44,189)</td>
</tr>
<tr>
<td>Stockholders' equity</td>
<td>$689,378</td>
<td>$761,195</td>
<td>$(71,817)</td>
</tr>
</tbody>
</table>

Our principal ongoing source of operating liquidity is the cash generated by our business operations. We consider all highly liquid investments and debt investments purchased with an original maturity of less than three months to be cash equivalents.

Our primary uses of cash have been to fund our working capital and capital expenditure needs, fund acquisitions, repurchase shares of our common stock and service our debt obligations. We believe that we have the ability to generate sufficient cash flows from operations to fund our operating and capital expenditure requirements, as well as to service our debt obligations, for the next 12 months. In the event we experience a significant adverse change in our business operations, we would likely need to secure additional sources of financing if our needs were in excess of the amount of funding available under our revolving credit facility.

As of December 31, 2016, we had working capital of $217.1 million and our primary commitments were normal working capital requirements and $6.9 million in accrued interest for the Senior Notes. In addition, we have commitments for acquisition related obligations related to past acquisitions totaling $3.7 million, for guaranteed earnouts, as of December 31, 2016 due within the next twelve months.

As of December 31, 2015, we had working capital of $261.3 million and our primary commitments were normal working capital requirements and $6.9 million in accrued interest for the Senior Notes. In addition, we had commitments for acquisition related obligations related to past acquisitions totaling $13.0 million, including both guaranteed and contingent earnouts, as of December 31, 2015 due within the next twelve months. We completed the sale of our Insurance business on December 29, 2015, at which time we received $140.2 million in proceeds on the sale and a deferred receivable of $23.1 million, to be paid to us on the second anniversary of the closing date, for which we recorded a receivable of $18.4 million for its present value. The divestiture of our Insurance business during 2015 is not expected to have a negative impact on our future working capital but may increase our cash conversion cycle as that business had a faster receivable turnover than our other operating segments.

We assess acquisition opportunities as they arise. Financing may be required if we decide to make additional acquisitions or if we are required to make any earnout payments to which the former owners of our acquired businesses may be entitled. There can be no assurance, however, that any such opportunities may arise, or that any such acquisitions may be consummated. Additional financing may not be available on satisfactory terms or at all when required.

Debt Financing
Senior Notes
As of December 31, 2016, we had $300.0 million in Senior Notes outstanding for which interest is accrued daily on the outstanding principal amount at 6.125% and is payable semi-annually, in arrears, on February 15th and August 15th. The Senior Notes are due August 15, 2018. Accrued interest on the Senior Notes as of December 31, 2016 is approximately $6.9 million. Refer to Note 11 in the Notes to Consolidated Financial Statements for a further description of the Senior Notes. The Company was in compliance with all required covenants as of December 31, 2016.
As previously reported in the Company's Current Report on Form 8-K dated November 14, 2014, pursuant to the Second Supplemental Indenture, dated as of November 14, 2014, by and among the Company, certain subsidiaries of the Company party thereto as guarantors and Wilmington Trust, National Association, as trustee, the Company obtained, among other things, an extension of the time permitted to deliver the requisite financial information for the quarter ended September 30, 2014 and, subject to payment by the Company of an additional consent fee, for the year ended December 31, 2014. The Company paid this additional consent fee on March 31, 2015. As a result of obtaining such extension and paying the additional consent fee, the Company was in compliance with all required covenants as of December 31, 2014. As previously reported in the Company's Current Report on Form 8-K dated May 15, 2015, pursuant to the Third Supplemental Indenture, dated as of May 11, 2015, by and among the Company, certain subsidiaries of the Company party thereto as guarantors and Wilmington Trust, National Association, as trustee, the Company obtained an extension of the time permitted to deliver the requisite financial information for the quarters ended September 30, 2014 and March 31, 2015 and for the year ended December 31, 2014.

Our Senior Notes Indenture and Revolving Credit Facility generally permit us to apply the net cash proceeds of approximately $130.0 million from the sale of our Insurance business to prepay outstanding debt and/or invest in assets useful to our business, in each case, within 365 days of our receipt of such net cash proceeds (subject, in the case of any investment, to a further 180-day extension under certain circumstances). If we do not apply such net cash proceeds in the manner and within the time period described above and the amount of unapplied net cash proceeds exceeds $10.0 million, we will be required to offer to purchase a portion of our outstanding Senior Notes using those unapplied net cash proceeds at an offer price equal to 100% of the principal amount of the Senior Notes, plus accrued and unpaid interest, if any, up to but not including, the date of purchase. As of December 31, 2016, it was determined that there were less than $10.0 million in unused net cash proceeds from the sale of our Insurance business that had not been applied as described above.

Revolving Credit Facility

We have a Revolving Credit Facility in an aggregate amount of $70.0 million which matures on May 17, 2018 ("Revolving Credit Facility"). All obligations under the Revolving Credit Facility are guaranteed by the Guarantors and are secured, subject to certain exceptions, by first priority liens and security interests in the assets of the Company and the Guarantors. As of December 31, 2016, there are letters of credits outstanding against our Revolving Credit Facility in the amount of $593,000 and we have approximately $69.4 million available under our Revolving Credit Facility. We are in compliance with all required covenants as of December 31, 2016.

On November 6, 2014, the Company announced it had obtained a waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information for the quarter ended September 30, 2014. On March 24, 2015, the Company announced it had obtained a second waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information for the year ended December 31, 2014. On May 11, 2015, the Company announced it had obtained a third waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information for the quarter ended March 31, 2015.

Cash Flows

Operating Activities

During the year ended December 31, 2016, $79.8 million of cash was provided by operating activities compared to $86 million for the same period in 2015. The decrease is primarily due to:

- $5.8 million of net cash refunded for income taxes in 2016, compared to $9.6 million in 2015, a decrease of $3.8 million
- $24.5 million decrease in net income excluding non-cash charges (primarily depreciation and amortization, impairment charges, deferred income taxes and changes in fair value of contingent acquisition consideration)
- $22.0 million increase in working capital changes in operating assets and liabilities, compared to prior year, including in 2016 an approximately $61.1 million payment for a legal settlement and in the 2015 the $15.0 million payment of an SEC settlement

During the year ended December 31, 2015, operating activities provided cash of $86 million compared to $42.5 million for the same period in 2014. The increase is primarily due to:

- $9.6 million of net cash refunded for income taxes in 2015, compared to net cash paid for taxes in 2014 of $48.4 million, a net increase of $58.1 million
- $1.6 million increase in net income excluding non-cash charges (primarily depreciation and amortization, an impairment charge in our Insurance business, deferred income taxes, changes in fair value of contingent acquisition consideration and an $18.4 million deferred receivable related to the sale of our Insurance business)
- $16.2 million decrease in working capital changes in operating assets and liabilities, compared to prior year, including the $15.0 million payment of an SEC settlement in 2015

Investing Activities

For the year ended December 31, 2016, cash flows used in investing activities was $76.2 million compared to $94.5 million provided by investing activities for the same period in 2015. The $170.7 million change is primarily due to:

- the $140.2 million of cash provided by the sale of the Insurance business in 2015
- an increase of $33.9 million of cash used for business acquisitions in 2016

For the year ended December 31, 2015, cash flows provided by investing activities was $94.5 million compared to $82.7 million used in investing activities for the same period in 2014. The increase is primarily due to:

- the $140.2 million of cash provided by the sale of the Insurance business in 2015
- $3.9 million of transaction expenses related to the sale of the Insurance business in 2015
- a decrease of $40.9 million of cash used for business acquisitions in 2015

Financing Activities

For the year ended December 31, 2016, cash used in financing activities was $64 million compared to $85.3 million for the same period in
2015. The change is primarily due to:

- a decrease of $23.8 million of cash used for the purchase of common stock in 2016
- $1.2 million more paid for acquisition consideration in 2016
- $1.4 million of fewer proceeds from the issuance of common stock from the exercise of stock options in 2015

For the year ended December 31, 2015, cash flows used in financing activities was $85.3 million, compared to $47.7 million of cash used in financing activities in the same period of 2014. The change is primarily due to:

- an increase of $21.2 million of cash used for the purchase of common stock in 2015
- $21.4 million of fewer proceeds from the issuance of common stock from the exercise of stock options in 2015
- $5.1 million less paid for contingent acquisition consideration in 2015

We estimate that our capital expenditures for furniture, fixtures, equipment and capitalized software will approximate $8.3 million during 2017.

**Contractual Obligations**

The following table represents the amounts due under the specified types of contractual obligations as of December 31, 2016:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Payments Due</th>
<th>One to Three</th>
<th>Three to Five</th>
<th>More Than Five</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less Than One Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating lease obligations (1)</td>
<td>$3,240</td>
<td>$6,712</td>
<td>$5,693</td>
<td>$13,434</td>
<td>$29,079</td>
</tr>
<tr>
<td>Purchase obligations (2)</td>
<td>$1,938</td>
<td>$1,327</td>
<td>$9</td>
<td>-</td>
<td>$3,274</td>
</tr>
<tr>
<td>Long-term debt (3)</td>
<td>$18,729</td>
<td>$318,640</td>
<td>-</td>
<td>-</td>
<td>$337,369</td>
</tr>
<tr>
<td>Acquisition obligations</td>
<td>$3,750</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$3,750</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$27,657</strong></td>
<td><strong>$326,679</strong></td>
<td><strong>$5,702</strong></td>
<td><strong>$13,434</strong></td>
<td><strong>$373,472</strong></td>
</tr>
</tbody>
</table>

(1) Includes our obligations under existing operating leases.
(2) Represents base contract amounts for Internet hosting, co-location, content distribution and other infrastructure costs.
(3) Represents interest and principal payments on the Senior Notes and commitment fees on the Revolving Credit Facility.

In January 2017, we entered into a new office lease for one of our businesses which expires in June 2022.

As of December 31, 2016, we have approximately $5.6 million accrued for uncertain tax positions, including estimated interest and penalties, included in other liabilities and non-current deferred tax assets, respectively, as we cannot determine when (or if) any tax payments will ultimately be paid. We also have approximately $31.6 million in other liabilities accrued for contingent liabilities as of December 31, 2016.

**OFF-BALANCE SHEET ARRANGEMENTS**

Off-balance sheet arrangements include the following four categories: obligations under certain guarantees or contracts; retained or contingent interests in assets transferred to an unconsolidated entity or similar arrangements; obligations under certain derivative arrangements; and obligations under material variable interests.

We have not entered into any material arrangements which would fall under any of these four categories and which would be reasonably likely to have a current or future material effect on our results of operations, liquidity or financial condition.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

**Interest Rate Risk**

We maintain or may maintain a portfolio of investments including bank deposits, U.S. Treasury securities, U.S. Government Agency securities, municipal securities, corporate debt securities and money market funds. The Company’s investment objectives, in order of priority, are 1) to preserve capital, 2) to maintain liquidity, and 3) to obtain a fair rate of return. In addition to other restrictions based on credit quality, the maximum maturity date for each investment is 24 months and the weighted average maturity of the portfolio may not exceed 12 months.

None of our outstanding debt as of December 31, 2016 was subject to variable interest rates as we did not have an outstanding balance for borrowed money under our Revolving Credit Facility as of December 31, 2016. Interest under our Revolving Credit Facility accrues at variable rates based, at our option, on the alternate base rate (as defined in the Revolving Credit Facility) plus a margin of 3.00% or at the adjusted LIBO rate (as defined in the Revolving Credit Facility) plus a margin of 2.00%. Our fixed interest rate debt includes $300.0 million of our Senior Notes in aggregate principal amount.

**Exchange Rate Sensitivity**

Our exposure to exchange rate risk is primarily that of a net receiver of currencies other than the U.S. dollar, primarily British Pound Sterling. Accordingly, changes in exchange rates, and in particular a strengthening of the U.S. dollar, can affect the Company's net sales and income from operations as expressed in U.S. dollars. Additionally, we have not engaged in any derivative or hedging transactions to date. During the year ended December 31, 2016, non-U.S. revenues were less than 1% of our total revenue. We estimate that a hypothetical 10% change (increase or decrease) in exchange rates would not have a material impact to our consolidated financial statements.
### Item 8. Financial Statements and Supplementary Data

#### INDEX TO FINANCIAL STATEMENTS

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<tr>
<td>Consolidated Statements of Comprehensive Income (Loss) for the Years Ended December 31, 2016, 2015 and 2014</td>
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<tr>
<td>Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2016, 2015 and 2014</td>
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</tr>
<tr>
<td>Consolidated Statements of Cash Flows for the Years Ended December 31, 2016, 2015 and 2014</td>
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<td>Notes to Consolidated Financial Statements</td>
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</tr>
</tbody>
</table>
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Bankrate, Inc.

We have audited the accompanying consolidated balance sheets of Bankrate, Inc. (a Delaware corporation) and subsidiaries (the “Company”) as of December 31, 2016 and 2015, and the related consolidated statements of comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Bankrate, Inc. and subsidiaries as of December 31, 2016 and 2015, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2016 in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2016, based on criteria established in the 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 22, 2017 expressed an adverse opinion.

/s/ GRANT THORNTON LLP

New York, New York
March 22, 2017
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Bankrate, Inc.

We have audited the internal control over financial reporting of Bankrate, Inc. (a Delaware corporation) and subsidiaries (the “Company”) as of December 31, 2016, based on criteria established in the 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). 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 (“Management’s Report”). Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. Our audit of, and opinion on, the Company’s internal control over financial reporting does not include the internal control over financial reporting of the NextAdvisor business, whose financial statements reflect total assets and revenues constituting 10% and 7% percent, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2016. As indicated in Management’s Report, the NextAdvisor business was acquired during 2016. Management’s assertion on the effectiveness of the Company’s internal control over financial reporting excluded internal control over financial reporting of NextAdvisor.

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

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.

A material weakness is a deficiency, or combination of control deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company’s annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management’s assessment. The material weakness related to the validation of key inputs to the valuation reports used to determine the contingent consideration liability in connection with the acquisition of NextAdvisor and the valuation of the impairment of finite lived assets and goodwill for the Quizzle business have been identified and included in Management’s Report on Internal Control over Financial Reporting appearing under Item 9A of the Company’s December 31, 2016 Annual Report on Form 10-K.

In our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2016, based on criteria established in the 2013 Internal Control—Integrated Framework issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of the Company as of and for the year ended December 31, 2016. The material weakness identified above was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2016 consolidated financial statements, and this report does not affect our report dated March 22, 2017, which expressed an unqualified opinion on those financial statements.

We do not express an opinion or any other form of assurance on management’s remediation plans for the identified material weakness.

/s/ GRANT THORNTON LLP
### Bankrate, Inc. and Subsidiaries

Consolidated Balance Sheets  
(In thousands, except share and per share data)

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$176,680</td>
<td>$237,204</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance for doubtful accounts of $190 and $147, respectively</td>
<td>52,211</td>
<td>56,265</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>42,041</td>
<td>26,871</td>
</tr>
<tr>
<td>Total current assets</td>
<td>270,932</td>
<td>320,340</td>
</tr>
<tr>
<td>Furniture, fixtures and equipment, net of accumulated depreciation of $19,514 and $16,027, respectively</td>
<td>15,440</td>
<td>10,189</td>
</tr>
<tr>
<td>Intangible assets, net of accumulated amortization of $202,331 and $168,627, respectively</td>
<td>192,119</td>
<td>205,766</td>
</tr>
<tr>
<td>Goodwill</td>
<td>599,805</td>
<td>567,544</td>
</tr>
<tr>
<td>Other assets</td>
<td>5,564</td>
<td>23,127</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$1,083,860</td>
<td>$1,126,966</td>
</tr>
<tr>
<td><strong>Liabilities and stockholders' equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$11,191</td>
<td>$10,147</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>27,887</td>
<td>25,838</td>
</tr>
<tr>
<td>Deferred revenue and customer deposits</td>
<td>1,369</td>
<td>1,508</td>
</tr>
<tr>
<td>Accrued interest payable</td>
<td>6,887</td>
<td>6,890</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>6,511</td>
<td>14,681</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>53,845</td>
<td>59,064</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>5,118</td>
<td>7,552</td>
</tr>
<tr>
<td>Long term debt, net of unamortized discount</td>
<td>295,721</td>
<td>293,284</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>39,798</td>
<td>5,871</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>394,482</td>
<td>365,771</td>
</tr>
<tr>
<td><strong>Stockholders' equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, par value $.01 per share - 50,000,000 authorized, none issued</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Common stock, par value $.01 per share - 300,000,000 shares authorized; 103,132,289 and 103,845,310 shares issued, respectively; 90,072,482 and 96,794,018 shares outstanding, respectively</td>
<td>1,032</td>
<td>1,039</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>903,177</td>
<td>886,261</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(71,119)</td>
<td>(36,985)</td>
</tr>
<tr>
<td>Less: Treasury stock, at cost - 13,059,807 and 7,051,292 shares, respectively</td>
<td>(142,983)</td>
<td>(88,616)</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(729)</td>
<td>(504)</td>
</tr>
<tr>
<td><strong>Total stockholders' equity</strong></td>
<td>689,378</td>
<td>761,195</td>
</tr>
<tr>
<td><strong>Total liabilities and stockholders' equity</strong></td>
<td>$1,083,860</td>
<td>$1,126,966</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
Bankrate, Inc. and Subsidiaries
Consolidated Statements of Comprehensive Income (Loss)
(In thousands, except share and per share data)

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$434,161</td>
<td>$371,964</td>
<td>$352,051</td>
</tr>
<tr>
<td>Costs and expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>227,546</td>
<td>173,261</td>
<td>180,445</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>17,512</td>
<td>15,821</td>
<td>14,756</td>
</tr>
<tr>
<td>Product development and technology</td>
<td>29,312</td>
<td>23,689</td>
<td>16,786</td>
</tr>
<tr>
<td>General and administrative</td>
<td>79,893</td>
<td>63,347</td>
<td>60,841</td>
</tr>
<tr>
<td>Legal settlements</td>
<td>5,345</td>
<td>3</td>
<td>1,403</td>
</tr>
<tr>
<td>Acquisition, disposition and related expenses</td>
<td>1,811</td>
<td>569</td>
<td>3,590</td>
</tr>
<tr>
<td>Restructuring-related expenses</td>
<td>(117)</td>
<td>5,616</td>
<td>-</td>
</tr>
<tr>
<td>Changes in fair value of contingent acquisition consideration</td>
<td>(6,481)</td>
<td>(421)</td>
<td>3,633</td>
</tr>
<tr>
<td>Impairment charges</td>
<td>43,110</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,247</td>
<td>40,843</td>
<td>34,502</td>
</tr>
<tr>
<td>Total costs and expenses</td>
<td>440,178</td>
<td>322,728</td>
<td>315,956</td>
</tr>
<tr>
<td>(Loss) income from operations</td>
<td>(6,017)</td>
<td>49,236</td>
<td>36,095</td>
</tr>
<tr>
<td>Interest and other expenses, net</td>
<td>19,677</td>
<td>22,279</td>
<td>20,816</td>
</tr>
<tr>
<td>(Loss) income before taxes</td>
<td>(25,694)</td>
<td>26,957</td>
<td>15,279</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>8,344</td>
<td>10,115</td>
<td>8,260</td>
</tr>
<tr>
<td>Net (loss) income from continuing operations</td>
<td>(34,038)</td>
<td>16,842</td>
<td>7,019</td>
</tr>
<tr>
<td>Net loss from discontinued operation, net of income taxes</td>
<td>(96)</td>
<td>(30,188)</td>
<td>(1,847)</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(34,134)</td>
<td>(13,346)</td>
<td>5,172</td>
</tr>
<tr>
<td>Basic net (loss) income per share:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>(0.38)</td>
<td>0.17</td>
<td>0.07</td>
</tr>
<tr>
<td>Discontinued operation</td>
<td>-</td>
<td>(0.31)</td>
<td>(0.02)</td>
</tr>
<tr>
<td>Basic net (loss) income per share</td>
<td>(0.38)</td>
<td>(0.14)</td>
<td>0.05</td>
</tr>
<tr>
<td>Diluted net (loss) income per share:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>(0.38)</td>
<td>0.17</td>
<td>0.07</td>
</tr>
<tr>
<td>Discontinued operation</td>
<td>-</td>
<td>(0.30)</td>
<td>(0.02)</td>
</tr>
<tr>
<td>Diluted net (loss) income per share</td>
<td>(0.38)</td>
<td>(0.13)</td>
<td>0.05</td>
</tr>
<tr>
<td>Weighted average common shares outstanding:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>89,181,386</td>
<td>97,637,936</td>
<td>100,399,458</td>
</tr>
<tr>
<td>Diluted</td>
<td>89,181,386</td>
<td>99,723,532</td>
<td>102,417,273</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(34,134)</td>
<td>(13,346)</td>
<td>5,172</td>
</tr>
<tr>
<td>Other comprehensive loss, net of tax</td>
<td>(225)</td>
<td>(138)</td>
<td>(173)</td>
</tr>
<tr>
<td>Comprehensive (loss) income</td>
<td>(34,359)</td>
<td>(13,484)</td>
<td>4,999</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
<th>Additional paid-in capital</th>
<th>Accumulated Deficit</th>
<th>Shares</th>
<th>Amount</th>
<th>Accumulated Other Comprehensive Loss - Foreign Currency Translation</th>
<th>Total Stockholders' Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Common Stock</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Treasury Stock</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balance at January 1, 2014</strong></td>
<td>101,749</td>
<td>$ 1,017</td>
<td>$ 864,152</td>
<td>(28,811)</td>
<td>(50)</td>
<td>$ (592)</td>
<td>$ (193)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of taxes</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Treasury stock purchased</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted stock issued, net of cancellations</td>
<td>824</td>
<td>8</td>
<td>(10,993)</td>
<td>-</td>
<td>701</td>
<td>10,985</td>
<td>-</td>
</tr>
<tr>
<td>Performance stock issued, net of cancellations</td>
<td>528</td>
<td>6</td>
<td>(998)</td>
<td>-</td>
<td>73</td>
<td>992</td>
<td>-</td>
</tr>
<tr>
<td>Common stock issued</td>
<td>1,540</td>
<td>16</td>
<td>22,810</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted stock issued, net of cancellations</td>
<td>60</td>
<td>-</td>
<td>700</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Performance stock issued, net of cancellations</td>
<td>-</td>
<td>-</td>
<td>17,067</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Net income</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5,172</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Balance at December 31, 2014</strong></td>
<td>104,701</td>
<td>$ 1,047</td>
<td>$ 892,738</td>
<td>(23,639)</td>
<td>(3,216)</td>
<td>$ (46,494)</td>
<td>$ (366)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of taxes</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Treasury stock purchased</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted stock issued, net of cancellations</td>
<td>(426)</td>
<td>(4)</td>
<td>(19,244)</td>
<td>-</td>
<td>1,557</td>
<td>19,248</td>
<td>-</td>
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<tr>
<td>Performance stock issued, net of cancellations</td>
<td>(529)</td>
<td>(5)</td>
<td>(17,744)</td>
<td>-</td>
<td>1,394</td>
<td>17,749</td>
<td>-</td>
</tr>
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<td>Common stock issued</td>
<td>99</td>
<td>1</td>
<td>1,407</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Stock-based compensation</td>
<td>-</td>
<td>-</td>
<td>19,417</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Performance stock issued, net of cancellations</td>
<td>-</td>
<td>-</td>
<td>17,067</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Divestiture and restructuring award modification</td>
<td>-</td>
<td>-</td>
<td>9,687</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Net loss</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(13,346)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Balance at December 31, 2015</strong></td>
<td>103,845</td>
<td>$ 1,039</td>
<td>$ 886,261</td>
<td>(36,985)</td>
<td>(7,051)</td>
<td>$ (88,616)</td>
<td>$ (504)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of taxes</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Treasury stock purchased</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted stock issued, net of cancellations</td>
<td>(102)</td>
<td>(1)</td>
<td>(929)</td>
<td>-</td>
<td>79</td>
<td>930</td>
<td>-</td>
</tr>
<tr>
<td>Performance stock issued, net of cancellations</td>
<td>(611)</td>
<td>(6)</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>-</td>
<td>-</td>
<td>17,839</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Net loss</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(34,134)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Balance at December 31, 2016</strong></td>
<td>103,132</td>
<td>$ 1,032</td>
<td>$ 903,177</td>
<td>(71,119)</td>
<td>(13,059)</td>
<td>$ (142,983)</td>
<td>$ (729)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
## Bankrate, Inc. and Subsidiaries
### Consolidated Statements of Cash Flows
(In thousands)

<table>
<thead>
<tr>
<th>Year ended</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$(34,134)</td>
<td>$(13,346)</td>
<td>5,172</td>
</tr>
<tr>
<td>Adjustments to reconcile net (loss) income to net cash provided by operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,247</td>
<td>65,884</td>
<td>58,989</td>
</tr>
<tr>
<td>Provision for doubtful accounts receivable</td>
<td>183</td>
<td>584</td>
<td>494</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>(2,434)</td>
<td>(18,296)</td>
<td>(382)</td>
</tr>
<tr>
<td>Amortization of deferred financing charges and original issue discount</td>
<td>2,438</td>
<td>1,803</td>
<td>2,201</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>19,159</td>
<td>19,417</td>
<td>17,067</td>
</tr>
<tr>
<td>Divestiture and restructuring stock award modifications</td>
<td>-</td>
<td>7,254</td>
<td>-</td>
</tr>
<tr>
<td>Loss (gain) on disposal of assets</td>
<td>256</td>
<td>(493)</td>
<td>-</td>
</tr>
<tr>
<td>Changes in fair value of contingent acquisition consideration</td>
<td>(6,481)</td>
<td>(421)</td>
<td>3,633</td>
</tr>
<tr>
<td>Gain on sale of discontinued operation</td>
<td>-</td>
<td>(8,566)</td>
<td>-</td>
</tr>
<tr>
<td>Impairment charges</td>
<td>43,110</td>
<td>35,000</td>
<td>-</td>
</tr>
<tr>
<td>Change in operating assets and liabilities, net of effect of business acquisitions:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>12,280</td>
<td>(6,274)</td>
<td>(8,560)</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>2,193</td>
<td>4,892</td>
<td>(21,870)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(1,232)</td>
<td>1,409</td>
<td>(317)</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>(16)</td>
<td>(18,329)</td>
<td>7,105</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>2,326</td>
<td>15,987</td>
<td>(21,500)</td>
</tr>
<tr>
<td>Deferred revenue and customer deposits</td>
<td>(139)</td>
<td>(456)</td>
<td>475</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>79,756</td>
<td>86,049</td>
<td>42,507</td>
</tr>
</tbody>
</table>

| **Cash flows from investing activities** | | | |
| Purchases of furniture, fixtures and equipment and capitalized software and website development costs | (11,455) | (10,987) | (10,972) |
| Cash received on sale of discontinued operation | - | 140,200 | - |
| Transaction expenses | - | (3,905) | - |
| Restricted cash | (1) | - | 6 |
| Cash used in business acquisitions, net | (64,728) | (30,810) | (71,729) |
| Net cash (used in) provided by investing activities | (76,184) | 94,498 | (82,695) |

| **Cash flows from financing activities** | | | |
| Cash paid for contingent acquisition consideration | (5,181) | (7,545) | (12,683) |
| Cash paid for deferred acquisition consideration | (3,521) | - | - |
| Purchase of Company stock | (55,297) | (79,119) | (57,879) |
| Proceeds from exercise of stock options, net of costs | - | 1,408 | 22,826 |
| Net cash used in financing activities | (63,999) | (85,256) | (47,736) |
| Effect of exchange rate on cash and cash equivalents | (97) | (138) | (96) |
| Net (decrease) increase in cash | (60,524) | 95,153 | (88,020) |
| Cash - beginning of period | 237,204 | 142,051 | 230,071 |
| Cash - end of period | 176,680 | 237,204 | 142,051 |
| Less cash of discontinued operation - end of period | - | - | 22,697 |
| Cash of continuing operations - end of period | $176,680 | $237,204 | $119,354 |

| **Supplemental disclosure of other cash flow activities** | | | |
| Cash paid for interest | $18,691 | $19,650 | $19,532 |
| Cash (refunded) paid for taxes, net | (5,793) | (9,645) | 48,444 |

| **Supplemental disclosure of non-cash investing and financing activities** | | | |
| Contingent acquisition consideration | 37,293 | 3,747 | 1,930 |
| Deferred receivable for business divestiture | - | 18,391 | - |

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

### NOTE 1 – ORGANIZATION AND BASIS OF PRESENTATION

**The Company**
Bankrate, Inc. and its subsidiaries ("Bankrate" or the "Company," "we," "us," "our") own and operate an Internet-based consumer banking, personal finance and senior care network ("Online Network"). Our flagship websites, CreditCards.com, Bankrate.com, and Caring.com are some of the Internet’s leading aggregators of information on more than 300 financial and senior care products and services, including credit cards, mortgages, deposits, and other personal finance categories. Additionally, we provide financial applications and information to a network of distribution partners and through national and state publications.

We operate the following reportable business segments:

- **Credit Cards** – we present visitors a comprehensive selection of consumer and business credit and prepaid cards, providing detailed information and comparison capabilities, and host news and advice on personal finance, credit card and bank policies, as well as tools, calculators, products and services to estimate credit scores and card benefits.
- **Banking** – we offer information on rates for various types of mortgages, home lending and refinancing. We maintain current rate information for more than 600 local markets, covering all 50 U.S. states. Consumers can customize searches for mortgage rates by loan size, type, maturity, and location through our online portals. We also offer rate information and original editorial content on various deposit products, retirement, taxes and debt management.
- **Senior Care** – we provide helpful caregiving content, a comprehensive online senior living directory for the United States, a local directory covering a wide array of other senior caregiving services and telephone support and advice from trained Family Advisors.
- **Other** – includes unallocated corporate overhead, the elimination of transactions between segments and the wind down of our China operations.

**Basis of Presentation**

The accompanying consolidated financial statements include the accounts of Bankrate, Inc., and subsidiaries CreditCards.com, Inc. ("CreditCards"), LinkOffers, Inc., CreditCards.com Limited (United Kingdom), Freedom Marketing Limited (United Kingdom), Caring, Inc., Wallaby Financial Inc., Quizzle, LLC., and Bankrate, LLC., after elimination of all intercompany accounts and transactions. During 2015, we sold our Insurance business. The operating results and the assets and liabilities of the Insurance business through the date of sale are classified as a discontinued operation for all periods presented in the Company’s consolidated financial statements with the exception of consolidated statements of cash flows which are presented on a consolidated basis.

**Reclassification**

During 2016, expenses were reclassified from sales and marketing expenses to cost of revenue and general and administration for one of our businesses. The expenses moved to cost of revenue are traffic acquisition costs in nature and more appropriately classified as costs of revenue, and the other costs more appropriately classified as general and administrative expenses. For 2015, $994,000 was reclassified from sales and marketing to cost of revenue and $290,000 was reclassified from marketing to general and administrative expense. For 2014, $178,000 was reclassified from sales and marketing to cost of revenue and $881,000 was reclassified from sales and marketing to general and administrative expense.

During 2016, management revised the strategy of its Quizzle reporting unit to focus its technology resources primarily on enhancing the user experience of the products and services provided by the Banking segment through greater personalization, and realigned its management reporting structure by integrating the Quizzle operations and reporting unit into the Banking reporting unit. All segment results reported for the years ended December 31, 2016 and 2015, and as of December 31, 2016, have been revised to reflect such change.

In accordance with the adoption of Accounting Standards Update ("ASU") 2016-15, “Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments”, classifications of certain transactions were adjusted in our consolidated statement of cash flows for the presentation of cash flows from operating, investing and financing activities, for each year presented. In accordance with the adoption of Accounting Standards Update ("ASU") ASU 2015-03, “Imputation of Interest—Simplifying the Presentation of Debt Issuance Costs,” our senior unsecured notes are presented net of their related deferred financing costs as of December 31, 2016 and 2015.

Our operations in China were previously presented as a discontinued operation as we were marketing them for sale. During the first half of 2016 we could not come to terms with the potential buyers of the business, negotiations ended and the plan to sell the business was abandoned. It was then determined to start the process of winding down and closing the operations in China, a process which, based on local requirements and regulations, is not expected to be completed until 2018. During the year ended December 31, 2016, we recorded approximately $588,000 for the acceleration of amortization and depreciation of certain intangible and work-in-process assets, furniture, fixtures and equipment and other assets based on their estimated remaining future economic life, and $529,000 as employee severance as the operations wind down. The accelerated amortization and depreciation recorded had an immaterial impact to our earnings per share for the year. Certain trademarks intangible assets and certain internally developed fixed assets deemed to have future economic lives, with fair values of $35,000 and $13,000, respectively, were transferred from the business to the Company.

**Share Repurchase Program**

In February 2016, the Company’s Board of Directors authorized a $50.0 million share repurchase program. Under the terms of the program, the Company was authorized to repurchase up to $50.0 million of its outstanding common stock, excluding commissions. Stock repurchases under this program could be made through open market and privately negotiated transactions. The timing and amount of specific repurchases were subject to the requirements of federal securities law, market conditions, alternative uses of capital and other factors. The stock repurchase program did not obligate the Company to acquire any particular amount of shares and the program could have been limited or terminated at any time without prior notice. The program was completed in April 2016. During the year ended December 31, 2016, we repurchased approximately 5.6 million shares for approximately $50.0 million, plus commission fees.

During the year ended December 31, 2016, we increased our treasury stock by 496,000 shares ($5.2 million) for shares withheld from the vesting of stock-based compensation awards to pay for employee tax withholding.
NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent gains and losses at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. We believe that the judgments, estimates and assumptions involved in the accounting for revenue recognition, income taxes, the allowance for doubtful accounts receivable, useful lives of intangible assets, share based payments and intangible asset impairment, goodwill impairment, acquisition accounting including the fair value of contingent acquisition consideration, and contingencies have the greatest potential impact on our consolidated financial statements, so we consider these to be our critical accounting policies. Actual results could differ from those estimates.

Revenue Recognition

Online revenue comprised 99%, 99% and 99% of total revenues during the years ended December 31, 2016, 2015 and 2014, respectively. Online advertising is monetized through the sale of advertising and sponsorships through displays, hyperlinks, and lead generation within the many owned and operated websites of our Online Network. In general, the amount of advertising we sell is a function of a number of market conditions including (i) the number of visitors to our Online Network, (ii) the number of ad pages we serve to those visitors, (iii) the click-through rate of our visitors on hyperlinks, (iv) the number of advertisements per page, (v) the rate at which visitors apply for and are approved for financial product offerings, and (vi) advertiser demand. The print publishing and licensing business is primarily engaged in the sale of advertising, mortgage and interest rate tables, and licensing of research information.

Consumer Inquiry Revenue

In the credit card segment, we deliver consumer inquiries as a click or phone call to our advertisers and primarily recognize revenue on a per-completed and approved application basis. We also have some card issuer agreements which recognize revenue on a per completed application basis.

In the banking segment, we deliver consumer inquiries in the form of clicks and calls and recognize revenue monthly for each inquiry based on the number of clicks at a cost-per-click for our mortgage and deposit and other banking products. Additionally, we recognize revenue based on the number of calls at a rate per-call.

In the senior care segment we deliver consumer inquiries to contracting senior care communities after qualifying the inquiries in our call center and matching them to a number of suitable communities. We recognize revenue for each consumer who moves into a community for which we provided the initial referral. We also deliver consumer leads to participating in-home care providers, for which we received fees on a per-lead basis.

We have also entered into revenue sharing arrangements with our vertical content and affiliate partners based on the revenue earned from their consumer inquiries. Revenue is recorded at gross amounts and partnership and affiliate payments are recorded in cost of revenue, pursuant to the provisions of ASC Topic 605-45, Reporting Revenue Gross as a Principal versus Net as an Agent.

Display Advertising Revenue

Display advertising sales are invoiced monthly at amounts based on contract terms predominantly based on the number of impressions delivered to the advertiser.

Print Publishing and Licensing Revenue

We charge for placement in the interest rate table for print publication. Advertising revenue is recognized when the rate tables are run in a publication. Revenue from the sale of research information is recognized ratably over the contract period.

Cost of Revenue

Cost of revenue represents expenses directly associated with the creation of revenue and costs of fulfilling services. These costs include contractual revenue sharing obligations resulting from our distribution arrangements ("distribution payments"), cost of traffic acquisition (primarily search engine marketing expense), display advertising expense, direct response television advertising expense, salaries, editorial costs, research costs, credit card processing fees, and allocated overhead. Distribution payments are made to website operators for visitors directed to our online network which we monetize through advertising, as well as for credit card offer clicks that are generated on our affiliated websites and monetized through our issuer network. Editorial costs relate to writers and editors who create original content for our online publications and associates who build web pages. Research costs include expenses related to gathering data on banking and credit products and consist primarily of compensation and benefits along with allocated overhead.

Fair Value Measurement

Fair value, in accordance with ASC 820, Fair Value Measurement, is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. Valuation techniques include the market approach (comparable market prices), the income approach (present value of future income or cash flow), and the cost approach (cost to replace the service capacity of an asset or replacement cost). These valuation techniques may be based upon observable and unobservable inputs. The three levels of inputs used to measure fair value pursuant to the guidance are as follows:

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

Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities, which includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Our financial instruments consist primarily of cash and cash equivalents, accounts receivable, the assets held in the Rabbi Trust and our Senior Notes. Given their short term nature, the carrying amounts of cash and cash equivalents, accounts receivable and accrued interest approximate estimated fair value and are considered Level 1 investments. The assets held in the Rabbi Trust are invested in equity securities and are considered Level 1 investments. The Senior Notes are considered Level 2 investments and the Company uses market information in measuring the fair value. These estimates require considerable judgment in interpreting market data, and changes in assumptions or estimation methods could significantly affect the fair value estimates.

Contingent liabilities include contingent acquisition consideration in connection with certain carveout provisions included in certain of the Company’s acquisitions. The contingent liabilities are recognized at fair value on the acquisition date and remeasured each reporting period with subsequent adjustments recognized in the consolidated statements of comprehensive income (loss). The fair value of the contingent acquisition consideration liability is expected to increase each period with the recognition of change in fair value of contingent consideration resulting from the passage of time at the applicable discount rate as we approach the payment dates of the contingent consideration absent any significant changes in assumptions related to the valuation or the probability of payment. Contingent acquisition consideration is valued using significant inputs that are not observable in the market which are defined as Level 3 inputs. The contingent liabilities also include contingent deferred compensation in connection with certain of the Company’s acquisitions. These contingent liabilities are remeasured each reporting period with subsequent adjustments recognized in the consolidated statements of comprehensive income (loss). The fair value of the contingent deferred compensation liability is based on the achievement of certain Adjusted EBITDA targets, tied to the participant’s employment, and is expected to increase each period with the recognition of change in fair value of contingent consideration resulting from the passage of time at the applicable discount rate as we approach the payment dates, absent any significant changes in assumptions related to the valuation or the probability of payment. Contingent deferred compensation is valued using significant inputs that are not observable in the market which are defined as Level 3 inputs.

The Company believes its estimates and assumptions are reasonable, however, there is significant judgment involved and actual results could differ from those estimates. See Note 7 – Fair Value Measurements for further information.

**Goodwill**

The Company records the excess of purchase price over the fair value of the net tangible and identified intangible assets acquired as goodwill. The goodwill is tested for impairment annually, as well as when an event, or change in circumstances, indicates impairment may have occurred. In accordance with Accounting Standards Codification (“ASC”) 350, Intangibles-Goodwill and Other, we first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not (a likelihood of more than 50%) that the fair value of our reporting unit is less than its carrying amount. We perform this assessment annually, on October 1st of each year, or more frequently if facts and circumstances warrant a review, at the reporting unit level. If after assessing the qualitative factors, we determine that it is not more likely than not that the fair value of the reporting unit is less than the carrying value then we conclude that we have no goodwill impairment and no further testing is performed, otherwise, we proceed to the two-step process. The first step under the two-step process is to compare the fair value of the reporting unit to its carrying value. If the fair value exceeds the carrying value, goodwill is not impaired and no further testing is performed. The reporting unit fair values are determined by using a weighted valuation approach among three different valuation methodologies consisting of an income approach and a market approach which is made up of the ‘guideline company method’ and the ‘reference transaction method’. The second step is performed if the carrying value exceeds the fair value. The implied fair value of the reporting unit’s goodwill must be determined and compared to the carrying value of the goodwill. If the carrying value of a reporting unit’s goodwill exceeds its implied value, an impairment loss equal to the difference will be recorded.

See Note 4 – Goodwill and Intangible Assets for discussion of the 2016 and 2015 impairments.

The Company followed the guidance in ASC 350-20-35 and performed the annual impairment test of goodwill as of October 1, 2016.

**Intangible Assets**

Intangible assets consist primarily of trademarks and domain names, customer relationships, affiliate relationships and developed technologies acquired in connection with our acquisitions. Intangible assets are being amortized over their estimated useful lives on a straight-line basis.

<table>
<thead>
<tr>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks and domain names</td>
</tr>
<tr>
<td>Customer relationships</td>
</tr>
<tr>
<td>Affiliate relationships</td>
</tr>
<tr>
<td>Developed technologies</td>
</tr>
</tbody>
</table>

**Impairment of Long-Lived Assets Including Intangible Assets with Finite Lives**

ASC 360, Property, Plant and Equipment, requires that long-lived assets, including intangible assets with finite lives, be amortized over their estimated useful life and reviewed for impairment. We continually monitor events and changes in circumstances that could indicate carrying amounts of our long-lived assets may not be recoverable. When such events or changes in circumstances occur, we assess the recoverability of such assets by determining whether the carrying value will be recovered through the undiscounted expected future cash flows. If the undiscounted future cash flows are less than the carrying amount of such assets, we recognize an impairment loss based on the excess of the carrying amount over the fair value of the assets.

See Note 4 – Goodwill and Intangible Assets for discussion of the 2016 impairment. There was no impairment of long-lived assets including intangible assets with finite lives for the years ended December 31, 2015 and 2014.

**Stock-Based Compensation**
We account for share-based compensation in accordance with ASC 718, Compensation—Stock Compensation. Under the fair value recognition provisions of ASC 718, share-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as an expense on a straight-line basis over the requisite service period, which is generally the vesting period. For awards with performance conditions, the probable outcomes of the performance conditions are assessed and if the conditions are determined as not probable to be achieved, no compensation cost will be recognized. If it is determined that the conditions are probable to be achieved, the related stock-based compensation expense is recognized over the requisite service period of the related awards. For awards containing market conditions, we estimate the fair value of the award using a Monte Carlo simulation model. Key inputs and assumptions used in the Monte Carlo simulation model include the stock price of the award on the grant date, the expected term, the risk-free interest rate over the expected term, the expected annual dividend yield and the expected stock price volatility. See Note 8—Stock-Based Compensation for further information regarding our stock-based compensation assumptions and expense.

**Website and Internal-Use Software Development Costs**

We account for website development costs under ASC 350-50, Intangibles—Goodwill and Other—Website Development Costs. ASC 350-50 provides guidance on the accounting for the costs of development of company websites, dividing the website development costs into five stages: (i) the planning stage, during which the business and/or project plan is formulated and functionalities, necessary hardware and technology are determined, (ii) the website application and infrastructure development stage, which involves acquiring or developing hardware and software to operate the website, (iii) the graphics development stage, during which the initial graphics and layout of each page are designed and coded, (iv) the content development stage, during which the information to be presented on the website, which may be either textual or graphical in nature, is developed, and (v) the operating stage, during which training, administration, maintenance and other costs to operate the existing website are incurred. The costs incurred in the website application and infrastructure stage, the graphics development stage and the content development stage are capitalized; all other costs are expensed as incurred. In addition, the Company incurs costs to develop software for internal use which are accounted for under ASC 350-40, Intangibles—Goodwill and Other—Internal-Use Software. The Company expenses all costs that relate to the preliminary, project and post-implementation operation phases of development as product development expense. Costs incurred in the application development phase are capitalized until the project is completed and the asset is placed in service. The Company capitalized website and internal-use software development costs totaling approximately $4.6 million, $2.8 million and $2.5 million during the years ended December 31, 2016, 2015 and 2014, respectively, which are recorded as a component of other assets on the balance sheet. Upon being placed into service and transferred to furniture, fixtures and equipment these capitalized costs are amortized over a three year period.

**Marketing Expense**

Marketing expense represents costs associated with expanding brand awareness of our products and services to consumers, and include internet and print advertising, marketing and promotion costs and direct response and television advertising. Marketing expenses are expensed as incurred within cost of revenues and sales and marketing expense. During the years ended December 31, 2016, 2015 and 2014, we incurred approximately $117.7 million, $72.4 million and $56.6 million, respectively, in marketing and advertising expenses recorded in cost of revenue and marketing and sales expense.

**Cash and Cash Equivalents**

We state all cash and cash equivalents at cost, which approximates market value. We consider all short-term highly liquid investments, with an original maturity of three months or less when purchased, to be cash equivalents. The carrying value of these investments approximates fair value. As of December 31, 2016, our cash and cash equivalents consisted of approximately $175.8 million of operating cash subject to the $250,000 FDIC insured deposit limit, approximately $751,000 held in British pound sterling and approximately $350,000 in Chinese Renminbi.

**Allowance for Doubtful Accounts**

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability or unwillingness of our customers to make required payments. We look at historical write-offs and sales growth when determining the adequacy of the allowance. Should the financial condition of our customers deteriorate, resulting in an impairment of their ability to make payments, or if the level of accounts receivable increases, the need for possible additional allowances may be necessary. Any additions to the allowance for doubtful accounts are recorded as bad debt expense and included in general and administrative expenses. During the years ended December 31, 2016, 2015 and 2014 we charged approximately $183,000, $265,000 and $130,000, respectively, to bad debt expense. During the years ended December 31, 2016, 2015 and 2014 we wrote off (net of recoveries) approximately $140,000, $305,000 and ($17,000), respectively, of accounts deemed uncollectible.

**Furniture, Fixtures and Equipment**

Furniture, fixtures and equipment, including computers and software, are stated at cost less accumulated depreciation, and are depreciated on a straight-line basis over the estimated useful lives of the assets which range from three to seven years. Expenditures related to maintenance and technical support are expensed as incurred. Leasehold improvements are depreciated on a straight-line basis over the shorter of their estimated useful lives or the underlying lease term, not to exceed twenty years.

**Basic and Diluted Income (Loss) Per Share**

We compute basic income (loss) per share by dividing net income (loss) for the year by the weighted average number of shares outstanding for the year. Diluted income (loss) per share includes the effects of dilutive common stock equivalents, consisting of outstanding share-based awards, in accordance with ASC 718, Compensation—Stock Compensation, to the extent the effect is not antidilutive, using the treasury stock method.

**Deferred Financing Costs**

Deferred financing costs represent the costs incurred in connection with the issuance of debt, (i.e. legal fees, underwriting, accounting and other direct costs). When incurred, these costs are deferred and amortized to interest expense on the straight-line method, which approximates the effective interest method, over the term of the related debt. The deferred costs are presented on the consolidated balance.
sheets within long-term debt, net. See Note 11– Debt for additional information.

Self-Insurance Reserves

The Company is self-insured for certain losses relating to medical claims. Self-insurance claims filed and claims incurred but not reported are accrued based upon management’s estimates of the discounted ultimate cost for self-insured claims incurred using actuarial assumptions followed in the insurance industry and historical experience. Although management believes it has the ability to reasonably estimate losses related to claims, it is possible that actual results could differ from recorded self-insurance liabilities. These reserves are included in accrued expenses in the accompanying consolidated balance sheets.

Deferred Compensation Plan

During 2002, we established a non-qualified deferred compensation plan that permitted eligible employees to defer a portion of their compensation. The plan is no longer accepting additional deferrals. The deferred compensation liability (included in other non-current liabilities) was $229,000 and $227,000 at December 31, 2016 and 2015, respectively. We have established a grantor trust (“Rabbi Trust”) to provide funding for benefits payable under our non-qualified deferred compensation plan. The assets held in the trust amounted to $178,000 and $173,000 at December 31, 2016 and 2015, respectively, and are included in other assets. The Rabbi Trust’s assets consist of short-term cash investments and a managed portfolio of equity securities. These assets are included in other assets in the accompanying consolidated balance sheets.

Income Tax Expense (Benefit)

We account for income taxes in accordance with ASC 740, Income Taxes. Under this method, deferred income taxes are determined based on the estimated future tax effects of differences between the financial statement and tax basis of assets and liabilities given the provisions of enacted tax laws. Deferred income tax provisions and benefits are based on changes to the assets or liabilities from year to year. In providing for deferred taxes, we consider tax regulations of the jurisdictions in which we operate, estimates of future taxable income, and available tax planning strategies. If tax regulations, operating results, or the ability to implement tax-planning strategies varies, adjustments to the carrying value of the deferred tax assets and liabilities may be required. Valuation allowances are based on the “more likely than not” criteria of ASC 740.

The accounting for uncertain tax positions guidance under ASC 740 requires that we recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the consolidated financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority. We recognize interest and penalties on uncertain tax positions as a component of income tax expense.

Foreign Currency Translation

Our foreign operations generally use the local currency as their functional currency. Assets and liabilities of these operations are translated at the exchange rates in effect on the balance sheet date. Income statement items are translated at the prevailing monthly average rate of exchange. The impact of currency fluctuations is recorded in accumulated other comprehensive loss as a currency translation adjustment.

Comprehensive Income (Loss)

Comprehensive income (loss) consists of net income (loss) and other gains (losses) for foreign currency translation that, under accounting principles generally accepted in the United States, are excluded from net income (loss).

Related Parties

The Company receives consulting services related to research and development from Global Logic, Inc., a portfolio company of funds advised by Apax Partners L.P. We made payments to Global Logic of approximately $128,000, $278,000 and $120,000 for the years ended December 31, 2016, 2015 and 2014, respectively.

New Accounting Pronouncements

Recently Adopted Pronouncements

In June 2014, the FASB issued ASU 2014-12, “Accounting for Share-Based Payments When the Terms of an Award Allow a Performance Target to Be Achieved After the Requisite Service Period,” which requires that a performance target that could be achieved after the requisite service period be treated as a performance condition that affects the vesting of the award. We adopted ASU 2014-12 on January 1, 2016, as required, and it did not have a significant impact on our consolidated financial statements.

In January 2015, the FASB issued ASU 2015-01, “Income Statement—Extraordinary and Unusual Items.” This guidance eliminates the concept of an extraordinary item, which required that an entity separately classify, present, and disclose extraordinary events and transactions, on the income statement, net of tax after earnings from continuing operations and disclose applicable income taxes and earnings per share date applicable to the extraordinary item. We adopted ASU 2015-01 on January 1, 2016, as required, and it did not have a significant impact on our consolidated financial statements.

In April 2015, the FASB issued ASU 2015-03, “Imputation of Interest—Simplifying the Presentation of Debt Issuance Costs.” This guidance requires that the debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the debt liability, consistent with the presentation of a debt discount. We adopted ASU 2015-03 on January 1, 2016, as required. The Company’s $300.0 million senior unsecured notes due 2018 are presented at December 31, 2016 and December 31, 2015 net of deferred financing costs of $23.1 million and $4.9 million, respectively. Deferred financing costs were previously included in other assets in the consolidated financial statements.

In April 2015, the FASB issued ASU 2015-05 “Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40)—Customers Accounting for Fees Paid in a Cloud Computing Arrangement.” The guidance in this update provide a basis for evaluating whether a cloud
computing arrangement includes a software license and clarification of the treatment of fees paid by the customer if that license is to internal-use software, other than internal-use software or not considered a license. We adopted ASU 2015-05 on January 1, 2016, as required, and it did not have a significant impact on our consolidated financial statements.

In June 2015, the FASB issued ASU 2015-10, “Technical Corrections and Improvements.” This guidance’s intention is (i) to clarify the Codification for differences between original guidance and the Codification, (ii) correct unintended application of guidance and correct references, or (iii) streamline, simplify or make minor improvements to the Codification through minor structural changes to headings or minor editing of text to improve the usefulness and understandability, that are not expected to have a significant effect on current accounting practice. We adopted ASU 2015-10 on January 1, 2016, as required, and it did not have a significant impact on our consolidated financial statements.

In September 2015, the FASB issued ASU 2015-16, “Business Combinations (Topic 805)—Simplifying the Accounting for Measurement-Period Adjustments.” The intention of this guidance is to simplify the accounting adjustments made to provisional amounts recognized in business combinations, as the amendment requires the adjustments to provisional amounts be recorded in the current period that they are identified, which eliminates the need to retrospectively account for those adjustments. We adopted ASU 2015-16 on January 1, 2016, as required, and it did not have a significant impact on our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, “Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments,” to address diversity in how certain specific cash receipts and cash payments are presented and classified in the statement of cash flows. We adopted this ASU 2016-15 for the year ended December 31, 2016, as permitted and applied a retrospective method as required, impacting the classification of certain transactions on our statement of cash flows.

Recently Issued Pronouncements, Not Adopted as of December 31, 2016

The FASB issued several updates on Topic 606 “Revenue from Contracts with Customers”, including:

- ASU 2014-09, “Revenue from Contracts with Customers (Topic 606)”
- ASU 2016-08 “Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net).”
- ASU 2016-09, “Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing.”
- ASU 2016-12, “Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients.”
- ASU 2016-20, “Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers.”

The standards provide companies with a single model for use in accounting for revenue arising from contracts with customers that supersedes current revenue recognition guidance, including industry-specific revenue guidance. The core principle of the model is to recognize revenue when control of the goods or services transfers to the customer, as opposed to recognizing revenue when the risks and rewards transfer to the customer under the existing revenue guidance. The guidance permits companies to either apply the requirements retrospectively to all prior periods presented, or apply the requirements in the year of adoption, through a cumulative adjustment. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted, to be effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2016. We plan to adopt this guidance effective January 1, 2018, as required. We understand that the adoption of these updates have the potential to materially impact our revenue recognition process and related expenses. We have engaged a third-party to assist in our analysis and review of our contracts regarding this guidance and we are in the process of completing the analysis of the standards’ impact on our Credit Cards segment, our largest revenue producing segment. While we have not completed our analysis of the impact of the provisions of these standards on the Credit Cards segment, at this time we have not identified any provisions that we would expect to have a significant impact on how we recognize revenue and related expenses for our Credit Cards segment. When the assessment of the Credit Cards segment is complete, we will analyze our remaining segments. We expect to complete our assessments prior to adoption of the guidance.

In August 2014, the FASB issued ASU 2014-15, “Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern,” which requires management to perform interim and annual assessments of an entity’s ability to continue as a going concern within one year of the date the consolidated financial statements are issued and to provide related footnote disclosures in certain circumstances. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2016. We do not expect the adoption of this guidance to have an impact on our consolidated financial statements and related disclosures.

In January 2016, the FASB issued ASU 2016-01 “Financial Instruments—Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities.” This update amends some of the existing guidance related to the recognition, measurement, presentation, and disclosure of financial instruments. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

In January 2016, the FASB issued ASU 2016-02 “Leases (Topic 842).” This update will supersede the leases requirements in Topic 840, Leases, and create an additional Topic 842, which specifies the accounting for leases. The objective is to establish the principles that lessees and lessors shall apply to report useful information to users of financial statements about the amount, timing, and uncertainty of cash flows arising from a lease. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09 “Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.” This update is intended to reduce complexity in accounting standard and simplify several aspects of the accounting for employee share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. In addition, the amendments in this update eliminate the guidance in Topic 718. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2016. Early adoption is permitted for any entity in any interim or annual period. We will adopt this guidance on January 1, 2017, as required. While we
do not expect the adoption of this guidance to have a material impact on our consolidated financial statements, earnings per share and related disclosures, we are adopting on a prospective basis and will be using actual forfeiture rates in related calculations.

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.” This update requires a financial asset, or group of financial assets, measured at amortized cost basis to be presented at the net amount expected to be collected. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted for any entity in any interim or annual period within those fiscal years, beginning after December 15, 2018. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU 2016-16, “Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory,” to improve the accounting for the income tax consequences of intra-entity transfers of assets other than inventory. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted for all entities in the first interim period if an entity issues interim financial statements. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

In November 2016, the FASB issued ASU 2016-18, “Statement of Cash Flows (Topic 230): Restricted Cash,” to provide guidance on the presentation of restricted cash or restricted cash equivalents in the statement of cash flows, thereby reducing the diversity in presentation. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. This update will effect the classification of certain transactions on our consolidated statements of cash flows and related disclosures.

In December 2016, the FASB issued ASU 2016-19, “Technical Corrections and Improvements.” This guidance’s intention is to (i) clarify the guidance and (ii) simplify the Accounting Standards Codification and improve its usefulness and understandability. The amendments in this update that require transition guidance, and that are effective under paragraph 350-40-65-2 are effective for public business entities for annual periods, including interim periods within those annual periods, beginning after December 15, 2016. The amendments that are effective under paragraph 820-10-65-11 are effective for fiscal years, and interim periods within those fiscal years, for all entities beginning after December 15, 2016. Early adoption for all amendments under ASU 2016-19 is permitted. We are evaluating this update, but do not expect it to have a significant impact on our consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU 2017-01, “Business Combinations (Topic 805): Clarifying the Definition of a Business.” These amendments clarify the definition of a business. The amendments affect all companies and other reporting organizations that must determine whether they have acquired or sold a business. The definition of a business affects many areas of accounting including acquisitions, disposals, goodwill, and consolidation. The amendments are intended to help companies and other organizations evaluate whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted under certain circumstances. The amendments should be applied prospectively as of the beginning of the period of adoption. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU 2017-04, “Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment.” The primary amendment of the guidance update to simplify the subsequent measurement of goodwill eliminated Step 2 from the goodwill impairment test. Instead, under the amendments in this update, an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value. This update is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted for any entity in any interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. We are evaluating the effect that this update will have on our consolidated financial statements and related disclosures.

NOTE 3 – FINANCIAL STATEMENT DETAILS

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred receivable for business divestiture</td>
<td>$20,592</td>
<td>$ -</td>
</tr>
<tr>
<td>Deferred payment in escrow</td>
<td>$7,928</td>
<td>-</td>
</tr>
<tr>
<td>Prepaid income taxes</td>
<td>$6,358</td>
<td>$21,728</td>
</tr>
<tr>
<td>Other current assets</td>
<td>$7,163</td>
<td>$5,143</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$42,041</strong></td>
<td><strong>$26,871</strong></td>
</tr>
</tbody>
</table>

(a) This deferred receivable is the December 31, 2016 present value of the $23.1 million to be paid to us on the second anniversary of the closing date of the sale of our Insurance business. As of December 31, 2015, the receivable was classified as non-current.

(b) Represents an unpaid deferred payment for the Acquired NextAdvisor Business, held in escrow for indemnity obligations.

Non-current assets

Non-current assets consisted of the following:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work-in-progress software development costs</td>
<td>$2,398</td>
<td>$2,640</td>
</tr>
<tr>
<td>Deferred receivable for business divestiture</td>
<td>$ -</td>
<td>$18,391</td>
</tr>
</tbody>
</table>
Other

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$2,096</td>
<td>$2,096</td>
</tr>
<tr>
<td></td>
<td>$3,166</td>
<td>$3,166</td>
</tr>
<tr>
<td></td>
<td>$5,564</td>
<td>$23,127</td>
</tr>
</tbody>
</table>

(a) This deferred receivable is the December 31, 2015 present value of the $23.1 million to be paid to us on the second anniversary of the closing date of the sale of our Insurance business. As of December 31, 2016, the receivable is classified as current.

**Furniture, Fixtures and Equipment**

Furniture, fixtures and equipment consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture and fixtures</td>
<td>$2,797</td>
<td>$1,239</td>
</tr>
<tr>
<td>Computers and software</td>
<td>22,629</td>
<td>20,425</td>
</tr>
<tr>
<td>Equipment</td>
<td>2,334</td>
<td>1,759</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>7,194</td>
<td>2,793</td>
</tr>
<tr>
<td></td>
<td>34,954</td>
<td>26,216</td>
</tr>
<tr>
<td>Less accumulated depreciation and amortization</td>
<td>19,514</td>
<td>16,027</td>
</tr>
<tr>
<td></td>
<td>$15,440</td>
<td>$10,189</td>
</tr>
</tbody>
</table>

Depreciation expense was approximately $6.4 million, $4.4 million and $3.8 million for the years ended December 31, 2016, 2015 and 2014, respectively. Included in the depreciation expense for the year ended December 31, 2016 is a charge of $929,000 ($585,000 net of tax) to accelerate the depreciation of certain assets that were removed from service during the year. This charge accounted for less than one cent of earnings per share.

**Accrued Expenses**

Accrued expenses consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued payroll and related benefits</td>
<td>$12,022</td>
<td>$5,892</td>
</tr>
<tr>
<td>Due to distribution partners</td>
<td>5,998</td>
<td>6,041</td>
</tr>
<tr>
<td>Marketing</td>
<td>3,324</td>
<td>1,781</td>
</tr>
<tr>
<td>Acquisition, disposition and related expenses</td>
<td>-</td>
<td>4,986</td>
</tr>
<tr>
<td>Other</td>
<td>6,543</td>
<td>7,138</td>
</tr>
<tr>
<td></td>
<td>$27,887</td>
<td>$25,838</td>
</tr>
</tbody>
</table>

**Other Current Liabilities**

Other current liabilities consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current acquisition related payables</td>
<td>$3,695</td>
<td>$12,490</td>
</tr>
<tr>
<td>Other</td>
<td>2,816</td>
<td>2,191</td>
</tr>
<tr>
<td></td>
<td>$6,511</td>
<td>$14,681</td>
</tr>
</tbody>
</table>

**Other Liabilities**

Other liabilities consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noncurrent acquisition related payables</td>
<td>$30,711</td>
<td>$3,906</td>
</tr>
<tr>
<td>Noncurrent deferred rent and lease obligation</td>
<td>4,137</td>
<td>29</td>
</tr>
<tr>
<td>Liability for uncertain tax positions</td>
<td>3,500</td>
<td>1,736</td>
</tr>
<tr>
<td>Other</td>
<td>1,450</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td>$39,798</td>
<td>$5,871</td>
</tr>
</tbody>
</table>

**NOTE 4 – GOODWILL AND INTANGIBLE ASSETS**

During the second quarter 2016, management noted that the operating results of its Banking reporting unit had begun to track below plan, primarily due to macroeconomic trends impacting its deposit and display advertising businesses. This triggering event resulted in impairment testing as of June 30, 2016. It was concluded that the reporting unit’s goodwill was impaired and we recorded a $25.0 million impairment of its goodwill in the second quarter 2016, determined using the income and market approaches. The Banking reporting unit was tested for impairment again during our annual assessment and it was concluded that no further impairment had occurred.

During 2016, management revised the strategy of its Quizzle reporting unit to focus its technology resources primarily on enhancing the
user experience of the products and services provided by the Banking segment through greater personalization, and realigned its management reporting structure by integrating the Quizzle operations and reporting unit into the Banking reporting unit. Management determined that the revised strategy, reporting structure, change in the estimated useful life of Quizzle’s developed technology intangible asset and the performance of initiatives utilizing Quizzle resources, each represented triggering events for impairment testing at the pre-realigned Quizzle reporting unit. As a result, we completed Step 1 analysis of goodwill, which indicated that the fair value was lower than the reporting unit’s carrying value. In accordance with ASC 350-20-35-18, management elected to record an estimated goodwill impairment of $4.2 million as of September 30, 2016, subject to completing our review and finalizing Step 2 of the analysis during the fourth quarter 2016. During the fourth quarter 2016, we completed Step 2 of the analysis, recording an additional goodwill impairment of $2.4 million for the pre-realigned Quizzle reporting unit for the year ended December 31, 2016. The impairment amount was determined using the income and market approaches, and was based on a number of factors including the estimated fair value of developed technology, trademarks and customer relationships (all valued using an income approach), as well as relevant market related data. Additionally, it was determined that the intangible assets of our pre-realigned Quizzle business unit were impaired and we recorded an intangible asset impairment of $7.5 million for the year ended December 31, 2016.

The Company followed the guidance in ASC 350-20-35 and performed the annual impairment test of goodwill as of October 1, 2016. In performing that test, it was noted that the carrying value of the Senior Care reporting unit exceeded its fair value. As a result, Step 2 was required to be performed. The implied fair value of goodwill was determined in the same manner as the amount of goodwill recognized in a business combination. We have determined the fair value of the reporting unit using the income and market approaches. We also determined the fair value of developed technology, domain names and customer relationships, using relevant market data. We recorded goodwill impairment of $4.0 million for the Senior Care reporting unit for the year ended December 31, 2016.

During 2015, it was determined that a triggering event had occurred in our former Insurance business unit. We recorded a $35.0 million charge for the impairment of goodwill within our Insurance segment resulting from the difference between the net book value of the business segment and the estimated fair value of the business. During the annual goodwill impairment testing, on October 1, 2015, we performed the assessment for all reporting units, including Step 2 testing for the Insurance business unit, and concluded that there was no impairment of goodwill including any further impairment of the Insurance business unit. During the fourth quarter 2015, the Insurance business was disposed and as such, the results of the business are presented as a discontinued operation for all periods presented.

During 2016, we acquired the NextAdvisor business, which is reported in our Credit Cards segment (see Note 12—Acquisitions).

Goodwill activity for the years ended December 31, 2016 and 2015 is shown below:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Credit Cards</th>
<th>Banking</th>
<th>Senior Care</th>
<th>Total Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1, 2015</td>
<td>$383,878</td>
<td>$138,127</td>
<td>$23,767</td>
<td>$543,772</td>
</tr>
<tr>
<td>Additions due to acquisitions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance, December 31, 2015</td>
<td>$383,878</td>
<td>$159,148</td>
<td>$24,518</td>
<td>$567,544</td>
</tr>
<tr>
<td>Additions due to acquisitions</td>
<td>67,893</td>
<td></td>
<td></td>
<td>$67,893</td>
</tr>
<tr>
<td>Impairment charges</td>
<td></td>
<td>(31,632)</td>
<td>(4,000)</td>
<td>(35,632)</td>
</tr>
<tr>
<td>Balance, December 31, 2016</td>
<td>$451,771</td>
<td>$127,516</td>
<td>$20,518</td>
<td>$599,805</td>
</tr>
</tbody>
</table>

Intangible assets consist primarily of trademarks and domain names, customer relationships, affiliate relationships and developed technologies. Intangible assets are amortized over their estimated useful lives on both straight-line and accelerated bases.

Intangible assets subject to amortization were as follows as of December 31, 2016:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Cost</th>
<th>Accumulated Amortization</th>
<th>Net</th>
<th>Weighted Average Amortization Period Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks and domain names</td>
<td>$204,534</td>
<td>$(84,494)</td>
<td>$120,040</td>
<td>16.5</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>157,648</td>
<td>(100,611)</td>
<td>57,037</td>
<td>9.0</td>
</tr>
<tr>
<td>Affiliate relationships</td>
<td>12,670</td>
<td>(6,922)</td>
<td>5,748</td>
<td>10.3</td>
</tr>
<tr>
<td>Developed technologies</td>
<td>18,167</td>
<td>(10,046)</td>
<td>8,121</td>
<td>6.2</td>
</tr>
<tr>
<td>Non-compete</td>
<td>1,431</td>
<td>(258)</td>
<td>1,173</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>$394,450</td>
<td>$(202,331)</td>
<td>$192,119</td>
<td>12.8</td>
</tr>
</tbody>
</table>

The intangible asset impairment of $7.5 million, for Quizzle, is reflected in the table above, and consisted of approximately $7.0 million for developed technology, $410,000 for trademarks and domain names and $70,000 for customer relationships.

Intangible assets subject to amortization were as follows as of December 31, 2015:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Cost</th>
<th>Accumulated Amortization</th>
<th>Net</th>
<th>Weighted Average Amortization Period Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks and domain names</td>
<td>$199,461</td>
<td>$(69,002)</td>
<td>$130,459</td>
<td>17.1</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>135,831</td>
<td>(84,183)</td>
<td>51,648</td>
<td>9.1</td>
</tr>
<tr>
<td>Affiliate relationships</td>
<td>12,670</td>
<td>(6,382)</td>
<td>6,288</td>
<td>10.3</td>
</tr>
<tr>
<td>Developed technologies</td>
<td>26,431</td>
<td>(9,060)</td>
<td>17,371</td>
<td>7.6</td>
</tr>
<tr>
<td></td>
<td>$374,393</td>
<td>$(168,627)</td>
<td>$205,766</td>
<td>13.3</td>
</tr>
</tbody>
</table>
Amortization expense for the years ended December 31, 2016, 2015 and 2014 was approximately $35.9 million, $36.4 million and $30.7 million, respectively. Included in amortization expense for the year ended December 31, 2015 is an approximately $1.8 million charge to fully amortize certain domain names intangible assets that the Company determined were removed from service during the year.

Future amortization expense as of December 31, 2016 is expected to be:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Amortization Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$34,534</td>
</tr>
<tr>
<td>2018</td>
<td>30,929</td>
</tr>
<tr>
<td>2019</td>
<td>22,277</td>
</tr>
<tr>
<td>2020</td>
<td>15,840</td>
</tr>
<tr>
<td>2021</td>
<td>13,446</td>
</tr>
<tr>
<td>Thereafter</td>
<td>75,093</td>
</tr>
<tr>
<td>Total expected amortization expense for intangible assets</td>
<td>$192,119</td>
</tr>
</tbody>
</table>

NOTE 5 – EARNINGS PER SHARE

We compute basic earnings per share by dividing net income (loss) for the period by the weighted average number of shares outstanding for the period. Diluted earnings per share includes the effects of dilutive common stock equivalents, consisting of outstanding stock-based awards, in accordance with ASC 718, Compensation – Stock Compensation, to the extent the effect is not anti-dilutive, using the treasury stock method.

The following table presents the computation of basic and diluted earnings per share:

<table>
<thead>
<tr>
<th>(In thousands, except share and per share data)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net (loss) income from continuing operations</td>
<td>$ (34,038)</td>
<td>$16,842</td>
<td>$7,019</td>
</tr>
<tr>
<td>Net loss from discontinued operation, net of income taxes</td>
<td>(96)</td>
<td>(30,188)</td>
<td>(1,847)</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$ (34,134)</td>
<td>$ (13,346)</td>
<td>$ 5,172</td>
</tr>
<tr>
<td>Weighted average common shares outstanding for basic earnings (loss) per share</td>
<td>89,181,386</td>
<td>97,637,936</td>
<td>100,399,458</td>
</tr>
<tr>
<td>Additional dilutive shares related to share based awards</td>
<td>-</td>
<td>2,085,596</td>
<td>2,017,815</td>
</tr>
<tr>
<td>Weighted average common shares outstanding for diluted earnings (loss) per share</td>
<td>89,181,386</td>
<td>99,723,532</td>
<td>102,417,273</td>
</tr>
<tr>
<td>Basic net (loss) income per share</td>
<td>$ (0.38)</td>
<td>$ 0.17</td>
<td>$ 0.07</td>
</tr>
<tr>
<td>Continuing operation</td>
<td>(0.31)</td>
<td>(0.02)</td>
<td></td>
</tr>
<tr>
<td>Discontinued operation</td>
<td>(0.30)</td>
<td>(0.02)</td>
<td></td>
</tr>
<tr>
<td>Basic net (loss) income per share</td>
<td>$ (0.38)</td>
<td>$ (0.14)</td>
<td>$ 0.05</td>
</tr>
<tr>
<td>Diluted net (loss) income per share</td>
<td>$ (0.38)</td>
<td>$ (0.13)</td>
<td>$ 0.05</td>
</tr>
<tr>
<td>Continuing operation</td>
<td>(0.30)</td>
<td>(0.02)</td>
<td></td>
</tr>
<tr>
<td>Discontinued operation</td>
<td>(0.30)</td>
<td>(0.02)</td>
<td></td>
</tr>
<tr>
<td>Diluted net (loss) income per share</td>
<td>$ (0.38)</td>
<td>$ (0.13)</td>
<td>$ 0.05</td>
</tr>
</tbody>
</table>

As we incurred a loss from continuing operations for the year ended December 31, 2016, all outstanding stock options, restricted stock awards and performance stock awards have an anti-dilutive effect and therefore are excluded from the computation of diluted weighted average shares outstanding for that period. Accordingly, basic and diluted weighted average shares outstanding are equal for such period. The following were excluded from the calculation of diluted earnings per share because their impact would have been anti-dilutive:

<table>
<thead>
<tr>
<th>Year ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Restricted shares and restricted stock units</td>
</tr>
<tr>
<td>Performance shares and performance stock units</td>
</tr>
<tr>
<td>Stock options</td>
</tr>
</tbody>
</table>

The restricted and performance shares, and restricted and performance stock units discussed above include only share and stock unit awards granted and exclude awards for which the number of shares to be awarded or paid are not yet determinable.

NOTE 6 – SEGMENT INFORMATION, GEOGRAPHIC DATA AND CONCENTRATIONS

No single country outside of the U.S. accounted for more than 10% of total revenue during the years ended December 31, 2016, 2015 and 2014. There were two customers that accounted for approximately 25% and 17% of total revenues each during the year ended December
During the year ended December 31, 2015, there were two customers that accounted for approximately 20% and 16% of total revenues each. In each year, the revenues from these customers were within multiple reporting segments. There were two customers in our Credit Cards segment with accounts receivable balances that constituted 24% and 11% of our consolidated accounts receivable as of December 31, 2016. As of December 31, 2015, there were two customers in our Credit Cards segment with accounts receivable balances that constituted 35% and 14% of our consolidated accounts receivable.

Revenue related to the U.S. and international operations for the years ended December 31, are as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>USA</td>
<td>$431,617</td>
<td>$368,424</td>
<td>$347,370</td>
</tr>
<tr>
<td>International</td>
<td>2,544</td>
<td>3,540</td>
<td>4,681</td>
</tr>
<tr>
<td></td>
<td>$434,161</td>
<td>$371,964</td>
<td>$352,051</td>
</tr>
</tbody>
</table>

Long-lived assets, net related to the U.S. and international operations as of December 31, are as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>$805,998</td>
<td>$780,576</td>
</tr>
<tr>
<td>International</td>
<td>1,366</td>
<td>2,923</td>
</tr>
<tr>
<td></td>
<td>$807,364</td>
<td>$783,499</td>
</tr>
</tbody>
</table>

Revenue generated through customer inquiry, display advertising and print publishing for the years ended December 31, was as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
</tr>
<tr>
<td>Consumer inquiry, including affiliate and other</td>
<td>$412,166</td>
</tr>
<tr>
<td>Display advertising</td>
<td>18,151</td>
</tr>
<tr>
<td>Print publishing</td>
<td>3,844</td>
</tr>
<tr>
<td></td>
<td>$434,161</td>
</tr>
</tbody>
</table>

Revenue generated through customer inquiry, display advertising and print publishing for the years ended December 31, were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Consumer inquiry, including affiliate and other</td>
<td>$334,899</td>
</tr>
<tr>
<td>Display advertising</td>
<td>32,931</td>
</tr>
<tr>
<td>Print publishing</td>
<td>4,134</td>
</tr>
<tr>
<td></td>
<td>$371,964</td>
</tr>
</tbody>
</table>

Revenue generated through customer inquiry, display advertising and print publishing for the years ended December 31, were as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>Consumer inquiry, including affiliate and other</td>
<td>$308,640</td>
</tr>
<tr>
<td>Display advertising</td>
<td>38,677</td>
</tr>
<tr>
<td>Print publishing</td>
<td>5,044</td>
</tr>
<tr>
<td></td>
<td>$352,051</td>
</tr>
</tbody>
</table>

The chief operating decision maker, the Company’s Chief Executive Officer, manages, assesses performance and allocates resources for the business based upon the separate financial information from the Company’s operating segments. In identifying its reportable segments, the Company also considered the nature of the services provided by its operating segments and other relevant factors. Senior Care does not meet the quantitative thresholds for a reportable segment, however management believes that information about the segment should be separately disclosed as it is useful to the readers of the financial statements.

In evaluating and assessing performance of the Company’s operating segments, and when allocating resources to business units needed in accomplishing its strategic goals, the assets of the business units are not a primary consideration of the chief operating decision maker.

The reportable segments presented below represent the Company’s operating segments for which separate financial information is available and utilized on a regular basis by its chief operating decision maker, the Company’s chief executive officer, to assess performance and allocate resources. Management evaluates the operating results of each of the Company’s operating segments based upon revenue and “Adjusted EBITDA”, which we define as income from continuing operations before depreciation and amortization; interest; income taxes; changes in fair value of contingent acquisition consideration; stock-based compensation and other items such as loss on extinguishment of debt, legal settlements, acquisition, disposition and related expenses; restructuring charges; any impairment charges; NextAdvisor contingent deferred compensation for the acquisition; costs related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation and indemnification obligations; purchase accounting adjustments; and our operations in China as we are winding down and ceasing its operations. The Company’s presentation of Adjusted EBITDA, a non-GAAP measure, may not be comparable to similarly titled measures used by other companies.

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
</tr>
<tr>
<td>Credit Cards (A)</td>
<td>$314,853</td>
</tr>
<tr>
<td>Banking (B)</td>
<td>101,440</td>
</tr>
<tr>
<td>Senior Care</td>
<td>23,480</td>
</tr>
<tr>
<td>Other</td>
<td>(5,612)</td>
</tr>
<tr>
<td>Total Company</td>
<td>$434,161</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Credit Cards (A)</td>
<td>$241,854</td>
</tr>
<tr>
<td>Banking (B)</td>
<td>109,677</td>
</tr>
<tr>
<td>Senior Care</td>
<td>23,855</td>
</tr>
<tr>
<td>Other</td>
<td>(3,422)</td>
</tr>
<tr>
<td>Total Company</td>
<td>$371,964</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>Credit Cards (A)</td>
<td>$226,869</td>
</tr>
<tr>
<td>Banking (B)</td>
<td>118,465</td>
</tr>
<tr>
<td>Senior Care</td>
<td>10,302</td>
</tr>
<tr>
<td>Other</td>
<td>(5,685)</td>
</tr>
<tr>
<td>Total Company</td>
<td>$352,051</td>
</tr>
</tbody>
</table>
Interest and other expenses, net (C)  
19,677  22,279  20,816  
Depreciation and amortization  
42,247  40,843  34,502  
Changes in fair value of contingent acquisition consideration  
(6,481)  (421)  3,633  
Stock-based compensation expense  (D)  
19,159  19,417  13,870  
Legal settlements  
5,345  3  1,403  
Acquisition, disposition and related expenses  
1,811  569  3,590  
Restructuring charge  
(117)  5,616  -  
Impairment charges  (E)  
43,110  -  -  
Restatement-related expenses  (F)  
7,853  11,432  23,586  
NextAdvisor contingent deferred compensation  (G)  
6,205  -  -  
China operations  (H)  
1,682  393  565  
Impact of purchase accounting  
-  35  556  
(Loss) income before income taxes  
$ (25,694)  $ 26,957  $ 15,279  

(A) Includes the results of NextAdvisor since its acquisition in June 2016.  
(B) During the third quarter 2016, management realigned its management reporting structure by integrating the Quizzle operations into the Banking segment. All segment results reported for the years ended December 31, 2016 and 2015 have been revised to reflect such change. (Quizzle was acquired in April 2015).  
(C) For the year ended December 31, 2015, includes a $703,000 charge for the exit of an office lease.  
(D) Excludes approximately $3.9 million and $3.2 million of stock based compensation costs for the years ended December 31, 2015 and 2014, respectively, related to the divestiture of our Insurance business during 2015. The costs related to our Insurance business are presented as a discontinued operation.  
(E) During the year ended December 31, 2016, $25.0 million, $6.6 million and $4.0 million was recorded for goodwill impairment to our Banking, pre-realigned Quizzle and Senior Care reporting units, respectively, and $7.5 million was recorded for intangible asset impairment to our pre-realigned Quizzle reporting unit.  
(F) Restatement-related expenses include expenses related to the Restatement, the Internal Review, the SEC and DOJ investigations and related litigation and indemnification obligations.  
(G) Represents contingent deferred compensation expense related to the NextAdvisor acquisition.  
(H) Represents the loss from the operations in China, and includes legal and other costs incurred to wind down those operations. The results of China were previously presented as a discontinued operation when it was actively marketed for sale. After the negotiations with the potential buyer did not result in a sale of the business, we initiated the process to wind down the operations. 

Segment revenues are recorded in accordance with our revenue recognition policy (see Note 2 – Summary of Significant Accounting Policies) and during the years ended December 31, 2016, 2015 and 2014, included $6.3 million, $4.9 million and $5.3 million, respectively, of intra-segment revenue which are eliminated within Other.

### NOTE 7 – FAIR VALUE MEASUREMENT

The carrying amounts of cash, accounts receivable and accrued interest approximate estimated fair value. In measuring the fair value of our long term debt, we used Level 2 market information. These estimates require considerable judgment in interpreting market data, and changes in assumptions or estimation methods could significantly affect the fair value estimates.

The following table presents estimated fair value, and related carrying amounts, as of:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial liabilities:</td>
<td>Carrying Amount</td>
<td>Estimated Fair Value</td>
</tr>
<tr>
<td>Long term debt (A)</td>
<td>$295,721</td>
<td>$302,250</td>
</tr>
</tbody>
</table>

(A) The carrying amount of long term debt is net of original issue discount and deferred financing fees.

We make recurring fair value measurements of our contingent acquisition consideration using Level 3 unobservable inputs. We recognize the fair value of contingent acquisition consideration based on its estimated fair value at the date of acquisition using discounted cash flows, Monte Carlo simulations or probability weighted-expected return model. Subsequent adjustments to the fair value are due to either the passage of time as we approach the payment date or changes to management’s estimates of the projected results of the acquired business. In determining the fair value of contingent acquisition consideration, we review current results of the acquired business along with projected results for the remaining earnout period, to calculate the expected contingent acquisition consideration to be paid using the agreed upon formula as laid out in the acquisition agreements. The fair value of the contingent acquisition consideration liability will be adjusted based on the change in fair value of contingent consideration resulting from the passage of time at the applicable discount rate, or changes in the forecasted results as we approach the payment dates of the contingent consideration absent any significant changes in assumptions related to the valuation or the probability of payment.

In addition, we make recurring fair value measurement of a contingent acquisition deferred compensation liability using Level 3 unobservable inputs. We recognize the fair value based on its estimated fair value at the beginning period date using discounted cash flows, Monte Carlo simulations or probability weighted-expected return model. Subsequent adjustments to the fair value are due to the passage of time as we approach the payment date or changes to management’s estimates of the projected performance target. In determining the fair value, we review current results along with projected results for the remaining earnout period to calculate the expected contingent acquisition deferred compensation to be paid using the agreed upon formula as laid out in the acquisition agreement. The fair value of the contingent acquisition deferred compensation liability will be adjusted based on the change in fair value resulting from the passage of time as we approach the payment date or changes to management’s estimates of the projected results of the acquired business along with projected results for the remaining earnout period, to calculate the expected contingent acquisition consideration to be paid using the agreed upon formula as laid out in the acquisition agreements. The fair value of the contingent acquisition consideration liability will be adjusted based on the change in fair value resulting from the passage of time.
at the applicable discount rate, or changes in the forecasted results as we approach the payment dates of the contingent acquisition deferred compensation absent any significant changes in assumptions related to the valuation or the probability of payment.

The unobservable inputs used in determining the fair value of contingent acquisition consideration for earnout periods not yet completed include discount factors of 14% to 18% based on our weighted average cost of capital and projected results of the acquired businesses. In addition, we consider the cost of debt to be a significant input in the valuation of the fair value of the contingent acquisition deferred compensation and certain contingent acquisition consideration liabilities. We used 4.5% percent as our cost of debt in these valuations as of December 31, 2016. The fair value calculated as of December 31, 2016 is subject to sensitivity as it relates to the projected results of the acquired businesses, which are uncertain in nature. Each calculation is based on a separate formula and results that differ from our projections could impact the fair value significantly.

The following tables present our fair value measurements of our contingent acquisition consideration, contingent acquisition deferred compensation and the assets of our non-qualified deferred compensation plan as of December 31, 2016 and 2015 using the fair value hierarchy.

### Fair Value Measurement at December 31, 2016 Using

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Quoted Prices in Active Markets for Identical Assets (Level 1)</th>
<th>Significant Other Observable Inputs (Level 2)</th>
<th>Significant Unobservable Inputs (Level 3)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent acquisition deferred compensation</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 869</td>
<td>$ 869</td>
</tr>
<tr>
<td>Contingent acquisition consideration</td>
<td>-</td>
<td>-</td>
<td>30,711</td>
<td>30,711</td>
</tr>
<tr>
<td>Total liabilities recurring fair value measurements</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 31,580</td>
<td>$ 31,580</td>
</tr>
</tbody>
</table>

### Fair Value Measurement at December 31, 2015 Using

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Quoted Prices in Active Markets for Identical Assets (Level 1)</th>
<th>Significant Other Observable Inputs (Level 2)</th>
<th>Significant Unobservable Inputs (Level 3)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent acquisition consideration</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 9,107</td>
<td>$ 9,107</td>
</tr>
<tr>
<td>Total liabilities recurring fair value measurements</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 9,107</td>
<td>$ 9,107</td>
</tr>
</tbody>
</table>

The following table sets forth a reconciliation of changes in the fair value of our contingent acquisition consideration Level 3 financial liabilities:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2016</th>
<th>Year ended December 31, 2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1,</td>
<td>$ 9,107</td>
<td>$ 19,028</td>
<td>$ 38,762</td>
</tr>
<tr>
<td>Additions to Level 3</td>
<td>37,293</td>
<td>3,747</td>
<td>1,930</td>
</tr>
<tr>
<td>Transfers into Level 3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transfers out of Level 3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Change in fair value</td>
<td>(6,481)</td>
<td>(421)</td>
<td>3,633</td>
</tr>
<tr>
<td>Payments</td>
<td>(9,208)</td>
<td>(13,247)</td>
<td>(25,297)</td>
</tr>
<tr>
<td>Balance, December 31,</td>
<td>$ 30,711</td>
<td>$ 9,107</td>
<td>$ 19,028</td>
</tr>
</tbody>
</table>

The current portion of the contingent acquisition consideration liability is recorded in other current liabilities and the non-current portion is recorded in other liabilities. During the year ended December 31, 2016, the Company changed certain estimates of the projected results of acquired businesses that resulted in a decrease in the fair value of contingent acquisition consideration and a benefit to operating income of approximately $7.9 million. The Company also recorded an expense of approximately $1.5 million related to the passage of time. During the year ended December 31, 2015, the Company changed certain estimates of the projected results of acquired businesses that resulted in a decrease in the fair value of contingent acquisition consideration and a benefit to operating income of approximately $2.5 million. The Company also recorded an expense of approximately $2.1 million related to the passage of time. During the year ended December 31, 2014,
the Company changed certain estimates of the projected results of acquired businesses that resulted in an increase in the fair value of contingent acquisition consideration and a charge to operating income of $530,000. The remaining $3.1 million recorded in the change in fair value of contingent acquisition consideration during the year ended December 31, 2014 related to the passage of time.

As of December 31, 2016, the possible contingent acquisition consideration payouts from our acquisitions range from zero to $164.1 million, depending on the achievement of certain targets by the acquired operations.

The following table sets forth a reconciliation of changes in the fair value of our contingent acquisition deferred compensation Level 3 financial liabilities:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2016</th>
<th>Year ended December 31, 2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1,</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Additions to Level 3</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Transfers into Level 3</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Transfers out of Level 3</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Change in fair value</td>
<td></td>
<td>869</td>
<td></td>
</tr>
<tr>
<td>Payments</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Balance, December 31</td>
<td>$</td>
<td>869</td>
<td>$</td>
</tr>
</tbody>
</table>

The current portion of the contingent acquisition deferred compensation liability is recorded in other current liabilities and the non-current portion is recorded in other liabilities. The fair value of the contingent acquisition deferred compensation is based on the achievement of certain Adjusted EBITDA targets and is tied to the participant’s employment. During the year ended December 31, 2016, we recorded an expense of $869,000 for the change in fair value of contingent acquisition deferred compensation, which consists of a $1.1 million increase related to the passage of time; partially offset by a decrease in the fair value of $255,000 due to the change certain estimates of the projected results. As of December 31, 2016, the possible contingent acquisition deferred compensation payout ranges from zero to $11.4 million, depending on the achievement of certain Adjusted EBITDA targets.

**NOTE 8 – STOCK-BASED COMPENSATION**

Our stock-based compensation program is a long-term retention program that is intended to attract, retain and provide incentives for directors, officers and employees in the form of non-qualified stock options, restricted stock and performance-based restricted shares or units. We typically settle stock-based awards with treasury shares.

In August 2015, the Company’s stockholders approved the 2015 Equity Compensation Plan (the “2015 Plan”), replacing the former 2011 Equity Compensation Plan (the “2011 Plan”), to grant stock-based awards for up to 8.0 million shares of our common stock. Under the 2015 Plan, the Compensation Committee of the Board of Directors or another Committee or delegate designated by the Board of Directors or Compensation Committee has the sole authority to determine who receives such grants, the type, size and timing of such grants, and to specify the terms of such awards. The purpose of the 2015 Plan is to attract and retain officers, employees and non-employees, to provide such persons incentives and rewards and to align the participants’ economic interests with that of our stockholders. As of December 31, 2016, approximately 6.2 million shares were available for future issuance under the 2015 plan. During the year ended December 31, 2016, there were no significant modifications to stock options or stock awards.

During the year ended December 31, 2015, the Company modified certain stock options and stock awards for approximately 40 individuals, granted in 2013, 2014 and 2015, related to the sale of its Insurance business and its restructuring initiatives. The modification resulted in an acceleration of the vesting periods of restricted and performance-based stock awards and an extension of the exercise period of the stock options. These modifications resulted in an additional expense of $9.7 million for the year ended December 31, 2015, of which, $6.3 million is recorded as a component of the net loss from discontinued operation and $3.4 million is recorded as a component of restructuring expense.

During the year ended December 31, 2014, the Company modified certain stock awards granted to an executive in 2011 and 2014. The modification resulted in an extension of the exercise period of current vested stock options and accelerated vesting of certain restricted stock grants. These modifications resulted in additional compensation expense of $147,000 for the year ended December 31, 2014.

The stock-based compensation expense for stock awards recognized in our consolidated statements of comprehensive income (loss) for the years ended December 31, 2016, 2015 and 2014 is as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenue</td>
<td>$1,890</td>
<td>$1,392</td>
<td>$1,275</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>1,741</td>
<td>2,427</td>
<td>1,558</td>
</tr>
<tr>
<td>Product development and technology</td>
<td>4,113</td>
<td>3,503</td>
<td>2,203</td>
</tr>
<tr>
<td>General and administrative</td>
<td>11,415</td>
<td>12,095</td>
<td>8,834</td>
</tr>
<tr>
<td>Total stock-based compensation</td>
<td>$19,159</td>
<td>$19,417</td>
<td>$13,870</td>
</tr>
</tbody>
</table>

Stock compensation expense includes $1.3 million for the year ended December 31, 2016, related to performance-based restricted share grants that are classified as a liability until the number of shares is determinable. This amount is included in the performance-based restricted share expense discussed below. These grants vest on their determination date, ratably over three years. The stock-based compensation expense presented in the table above excludes approximately $3.9 million and $3.2 million for the years ended December 31, 2015 and 2014, respectively, related to our divestiture of the Insurance business in 2015. The costs related to the Insurance business are presented as a discontinued operation.
Restricted Stock

Restricted stock awards granted in 2016, 2015 and 2014 primarily vest in equal installments on the first, second and third anniversaries of the grant date subject to continued employment through the applicable vesting date. Restricted stock with one- or two-year cliff vesting terms were also issued during 2014. These restricted stock grants are valued based on the market price of the common stock on the date of grant. Compensation expense arising from restricted stock grants with cliff vesting is recognized using the straight line method over the requisite service period.

The following table summarizes restricted stock award activity for the years ended and grants outstanding as of December 31:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1, 2014</td>
<td>973,193</td>
<td>$15.66</td>
</tr>
<tr>
<td>Granted</td>
<td>1,688,632</td>
<td>13.98</td>
</tr>
<tr>
<td>Vested and released</td>
<td>(336,395)</td>
<td>15.39</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(163,048)</td>
<td>15.50</td>
</tr>
<tr>
<td>Balance, December 31, 2014</td>
<td>2,162,382</td>
<td>$14.40</td>
</tr>
<tr>
<td>Granted</td>
<td>1,557,283</td>
<td>12.36</td>
</tr>
<tr>
<td>Vested and released</td>
<td>(1,402,856)</td>
<td>13.85</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(426,430)</td>
<td>13.42</td>
</tr>
<tr>
<td>Balance, December 31, 2015</td>
<td>1,890,379</td>
<td>13.35</td>
</tr>
<tr>
<td>Granted</td>
<td>78,646</td>
<td>11.82</td>
</tr>
<tr>
<td>Vested and released</td>
<td>(828,802)</td>
<td>13.53</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(101,939)</td>
<td>12.23</td>
</tr>
<tr>
<td>Balance, December 31, 2016</td>
<td>1,038,284</td>
<td>$12.86</td>
</tr>
</tbody>
</table>

Stock-based compensation expense for the years ended December 31, 2016, 2015 and 2014 included approximately $9.6 million, $14.2 million and $7.7 million related to restricted stock awards, respectively.

The total fair value of restricted stock awards that vested during the years ended December 31, 2016, 2015 and 2014 was $11.2 million, $19.4 million and $5.2 million, respectively.

As of December 31, 2016, there was $7.8 million of unrecognized compensation cost related to non-vested restricted stock awards, expected to be recognized over a weighted average period of approximately 0.8 years.

Restricted Stock Units

During the year ended December 31, 2016, restricted stock units were awarded that vest ratably over a three year period following the date of the grant.

<table>
<thead>
<tr>
<th></th>
<th>Number of Units</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1, 2016</td>
<td>-</td>
<td>$-</td>
</tr>
<tr>
<td>Granted</td>
<td>2,581,647</td>
<td>8.27</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(183,598)</td>
<td>8.31</td>
</tr>
<tr>
<td>Balance, December 31, 2016</td>
<td>2,398,049</td>
<td>$8.27</td>
</tr>
</tbody>
</table>

Stock-based compensation expense related to restricted stock units for the year ended December 31, 2016 was approximately $4.8 million. As of December 31, 2016, there was unrecognized compensation cost related to non-vested restricted stock units of $15.0 million, net of forfeitures, which is expected to be recognized over an estimated weighted average period of 1.2 years.

Performance-Based Restricted Shares

During 2015, we granted performance-based restricted share awards that include a performance condition, with the number of shares ultimately issued determined based on the Company’s Adjusted EBITDA for the two years ending December 31, 2016. The granted amount represents the maximum amount of the award at 150% of the target and the total number of shares ultimately issued can range from 0% to 100% of the granted amount. No expense has been recognized for this 2015 award as the performance condition has not been met.

During 2014, we granted performance-based restricted share awards, which included a performance condition pursuant to which the number of shares ultimately issued were determined based on the Company’s aggregate performance for the two years ending December 31, 2015. Performance shares were also granted to Steven Barnhart, who was hired as an interim Chief Financial Officer of the Company during 2014, with a performance condition of being appointed Chief Financial Officer, which has been satisfied. Shares granted are to vest in five equal installments on each of the first five anniversaries of March 12, 2014, which is the date on which Mr. Barnhart was appointed Chief Financial Officer on a non-interim basis.

Stock-based compensation expense related to performance-based restricted shares for the years ended December 31, 2016 and 2015 was approximately $2.0 million and $2.3 million, respectively. We did not record stock-based compensation expense related to performance-based restricted shares during the year ended December 31, 2014. The total fair value of performance-based restricted share awards that vested during the years ended December 31, 2016 and 2015 was $1.5 million and $2.3 million, respectively. No shares vested during 2014. As of December 31, 2016, there was unrecognized compensation expense related to non-vested performance stock awards of $1.1 million, net of forfeitures, which is estimated to be recognized over a weighted average period of 1.2 years.
Performance-based shares activity and grants outstanding were as follows for the years ended and as of December 31:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance, January 1, 2014</strong></td>
<td>419,500</td>
<td>$14.77</td>
</tr>
<tr>
<td><strong>Granted</strong></td>
<td>1,217,145</td>
<td>15.77</td>
</tr>
<tr>
<td><strong>Vested/Earned</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Forfeited</strong></td>
<td>(196,425)</td>
<td>16.06</td>
</tr>
<tr>
<td><strong>Unearned</strong></td>
<td>(419,500)</td>
<td>14.77</td>
</tr>
<tr>
<td><strong>Balance, December 31, 2014</strong></td>
<td>1,020,720</td>
<td>15.71</td>
</tr>
<tr>
<td><strong>Granted</strong></td>
<td>1,394,288</td>
<td>12.73</td>
</tr>
<tr>
<td><strong>Vested/Earned</strong></td>
<td>(528,506)</td>
<td>14.41</td>
</tr>
<tr>
<td><strong>Forfeited</strong></td>
<td>(516,002)</td>
<td>16.06</td>
</tr>
<tr>
<td><strong>Balance, December 31, 2015</strong></td>
<td>1,218,418</td>
<td>12.80</td>
</tr>
<tr>
<td><strong>Granted</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Vested/Earned</strong></td>
<td>97,614</td>
<td>15.33</td>
</tr>
<tr>
<td><strong>Forfeited</strong></td>
<td>95,134</td>
<td>13.22</td>
</tr>
<tr>
<td><strong>Balance, December 31, 2016</strong></td>
<td>1,025,670</td>
<td>12.52</td>
</tr>
</tbody>
</table>

**Performance-Based Restricted Stock Units**

During 2016, performance-based restricted stock units were awarded that vest based upon a performance factor, which is equal to a measure of the Company’s profitability over a 2 year period and multiplied by a total shareholder return factor achieved by the Company relative to a determined peer group, with 50% vesting on the determination date, which will be the later of (i) the date on which the audit of the Company’s consolidated financial statements for its fiscal year 2017 is completed and (ii) the date on which the final calculation of the relative total shareholder return factor is made by the Compensation Committee of the Board of Directors; and 50% on the third anniversary of the grant date. The granted amount represents the target amount of performance-based restricted stock units to be awarded. The amount awarded is determined based on the Company’s financial performance metric, Adjusted EBITDA. The total number of performance-based restricted stock units earned based on the financial performance metric can range from 0% to 150% of the target amount. The total shareholder return factor could further adjust the number of performance-based restricted stock units earned by a maximum increase or decrease of 25%.

Stock-based compensation expense related to the performance-based restricted stock units for the year ended December 31, 2016 was $1.9 million. As of December 31, 2016, there was unrecognized compensation expense related to non-vested performance-based restricted stock units of $3.8 million, net of forfeitures, which is expected to be recognized over an estimated weighted average period of 1.8 years.

The grant date fair value of performance-based restricted stock units incorporates a total-stockholders return metric, which is estimated using a Monte Carlo simulation model to estimate the Company’s ranking relative to an applicable stock index of peers. The weighted average assumptions used in the Monte Carlo simulation model to calculate the fair value of the Company’s performance-based restricted stock unit awards are outlined below.

<table>
<thead>
<tr>
<th></th>
<th>Year ended December 31, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected volatility of stock price</td>
<td>56.35%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.94%</td>
</tr>
<tr>
<td>Valuation period</td>
<td>2.06 years</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

Performance-based restricted stock unit activity was as follows for the year ended December 31:

<table>
<thead>
<tr>
<th></th>
<th>Number of Units</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance, January 1, 2016</strong></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td><strong>Granted</strong></td>
<td>896,711</td>
<td>9.21</td>
</tr>
<tr>
<td><strong>Forfeited</strong></td>
<td>(62,778)</td>
<td>9.21</td>
</tr>
<tr>
<td><strong>Balance, December 31, 2016</strong></td>
<td>833,933</td>
<td>$9.21</td>
</tr>
</tbody>
</table>

**Stock Options**

We use the Black-Scholes option pricing model to determine the fair value of our stock options. The determination of the fair value of the awards on the date of grant using an option-pricing model is affected by the price of our common stock, as well as assumptions regarding a number of complex and subjective variables, and is considered a Level 3 unobservable input. These variables include expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors, risk-free interest rates, expected dividends and the estimated forfeiture rate.

We estimated the expected term of outstanding stock options by considering the vesting term and the contractual term of the option, as well
as the historical option exercise behavior of employees, as illustrated in ASC 718, Compensation—Stock Compensation. The estimated volatility of our common stock is determined based on facts and circumstances at the time of the grant, along with the historical trading volatility of our stock. For stock option grants issued prior to 2014, we used the simplified method to estimate the expected term for employee stock option grants and we previously estimated the volatility of our common stock by using an average of historical stock price volatility of publicly traded entities that are considered peers to Bankrate in accordance with ASC 718. We based the risk-free interest rate used in the option pricing model on U.S. Treasury constant maturity issues having remaining terms similar to the expected terms of the options. We do not anticipate paying any cash dividends in the foreseeable future and therefore use an expected dividend yield of zero in the option pricing model. We are required to estimate forfeitures at the time of grant and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting option forfeitures and record share-based compensation expense only for those awards that are expected to vest. All share-based payment awards are recognized on a straight-line basis over the requisite service periods, which is generally the vesting period. During the fourth quarter of 2016, we evaluated our forfeiture rate based on historical experience and updated the forfeiture rate from 8% to 12%. If factors change and we employ different assumptions for estimating share-based compensation expense in future periods or if we decide to use a different valuation model, the future periods may differ significantly from what we have recorded in the current period and could materially affect our operating income, net income and net income per share.

Stock options granted contained a contractual term of seven years. Stock option activity and grants outstanding were as follows for the years ended and as of December 31:

<table>
<thead>
<tr>
<th>Number of Options</th>
<th>Exercise Price Per Share</th>
<th>Weighted Average Exercise Price</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, January 1, 2014</td>
<td>5,058,543</td>
<td>$11.05 - 24.25</td>
<td>$15.70</td>
</tr>
<tr>
<td>Granted</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Exercised</td>
<td>(1,520,938)</td>
<td>11.05 - 18.08</td>
<td>15.01</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(174,866)</td>
<td>14.32 - 23.71</td>
<td>16.79</td>
</tr>
<tr>
<td>Expired</td>
<td>(537,030)</td>
<td>14.32 - 23.71</td>
<td>15.53</td>
</tr>
<tr>
<td>Granted</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Exercised</td>
<td>(98,716)</td>
<td>11.05 - 15.00</td>
<td>14.27</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(54,746)</td>
<td>11.05 - 24.25</td>
<td>15.47</td>
</tr>
<tr>
<td>Expired</td>
<td>(170,321)</td>
<td>15.00 - 24.25</td>
<td>17.26</td>
</tr>
<tr>
<td>Granted</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Forfeited</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Expired</td>
<td>(1,546,986)</td>
<td>11.05 - 22.39</td>
<td>15.57</td>
</tr>
<tr>
<td>Balance, December 31, 2016</td>
<td>954,940</td>
<td>$12.55 - 22.39</td>
<td>$16.81</td>
</tr>
</tbody>
</table>

The following table summarizes our options outstanding and options currently exercisable.

<table>
<thead>
<tr>
<th>As of December 31, 2016</th>
<th>Number of Options</th>
<th>Weighted Average Exercise Price</th>
<th>Weighted Average Contractual Term (in years)</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Options vested and expected to vest</td>
<td>954,940</td>
<td>$16.81</td>
<td>4.0</td>
<td>-</td>
</tr>
<tr>
<td>Options exercisable</td>
<td>902,845</td>
<td>16.60</td>
<td>4.0</td>
<td>-</td>
</tr>
</tbody>
</table>

The aggregate intrinsic value of stock options outstanding in the table above is calculated as the difference between the closing price of Bankrate’s common stock on the last trading day of the reporting period ($11.05 at December 31, 2016) and the exercise price of the stock options multiplied by the number of shares underlying options with exercise prices less than the closing price on the last trading day of the reporting period. Stock compensation expense related to stock option awards for the year ended December 31, 2016, 2015 and 2014 was $800,000, $2.9 million and $6.2 million, respectively.

Pursuant to the income tax provisions of ASC 718, we follow the “long-haul method” of computing our hypothetical additional paid-in capital, or APIC, pool. Approximately 88,000 stock options vested during the year ended December 31, 2016. The intrinsic value of stock options exercised during the years ended December 31, 2015 and 2014 was $83,000 and $8.2 million, respectively.

As of December 31, 2016, approximately $400,000 of total unrecognized compensation costs, net of forfeitures, related to non-vested stock option awards is expected to be recognized over a weighted average period of 0.4 years.

**NOTE 9 – INCOME TAXES**

The Company files income tax returns in the U.S. and various state, local and foreign jurisdictions. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and require significant judgment. With few exceptions, we are no longer subject to U.S. federal, state and local, and non-U.S. income tax examinations by tax authorities for the years before 2012. While we are currently under examination by various state and local tax authorities, we believe that there will be no material changes to the Company’s income tax liability as a result of these audits in the next twelve months.

The following is a summary of tax jurisdictions under audit:

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Tax Year(s)</th>
</tr>
</thead>
</table>
The components of income (loss) from continuing operations before income taxes were as follows:

(\text{In thousands})

\begin{tabular}{lrrr}
 & 2016 & 2015 & 2014 \\
\hline
\text{U.S.} & $(23,807)$ & $28,961$ & $17,867$ \\
\text{International} & $2,004$ & $(2,588)$ \\
\text{Income (loss) from continuing operations} & $(25,694)$ & $26,957$ & $15,279$ \\
\hline
\end{tabular}

The components of the income tax expense (benefit) from continuing operations are as follows:

(\text{In thousands})

\begin{tabular}{lrrr}
 & 2016 & 2015 & 2014 \\
\hline
\text{Current:} & & & \\
\text{Federal} & $9,127$ & $25,428$ & $9,752$ \\
\text{State} & $1,651$ & $1,806$ & $(1,155)$ \\
\text{Total current} & $10,778$ & $27,234$ & $8,597$ \\
\text{Deferred:} & & & \\
\text{Federal} & $(1,161)$ & $(16,654)$ & $(2,306)$ \\
\text{State} & $(1,273)$ & $(465)$ & $1,969$ \\
\text{Total deferred} & $(2,434)$ & $(17,119)$ & $(337)$ \\
\text{Total income tax expense} & $8,344$ & $10,115$ & $8,260$ \\
\hline
\end{tabular}

The difference between income tax expense (benefit) computed at the statutory rate and the reported income tax (benefit) expense from continuing operations is as follows:

(\text{In thousands})

\begin{tabular}{lrrr}
 & 2016 & 2015 & 2014 \\
\hline
\text{Income taxes at statutory rate} & $8,993$ & $9,434$ & $5,348$ \\
\text{State income taxes, net of federal benefit} & $(1,028)$ & $1,534$ & $1,727$ \\
\text{Foreign losses} & $101$ & $134$ & $342$ \\
\text{Permanent items} & $442$ & $(262)$ & $6,287$ \\
\text{Goodwill impairment} & $10,150$ & - & - \\
\text{Adjustments to income tax payable} & - & $(256)$ & $(591)$ \\
\text{Uncertain tax positions} & $1,637$ & $(1,202)$ & $(8,441)$ \\
\text{Adjustment to deferred tax assets} & - & $1,685$ & $488$ \\
\text{Rate changes} & $(658)$ & $(1,310)$ & $(647)$ \\
\text{IRS and state audits} & $863$ & - & $407$ \\
\text{Stock compensation} & $6,066$ & $920$ & $1,975$ \\
\text{State amended tax returns} & $(734)$ & $(253)$ & $(684)$ \\
\text{IRC Sec. 481(a) adjustment} & - & $(886)$ & $916$ \\
\text{Valuation allowance} & $1,497$ & $613$ & $1,133$ \\
\text{Other} & $(115)$ & $(36)$ & - \\
\text{Total income tax expense} & $8,344$ & $10,115$ & $8,260$ \\
\hline
\end{tabular}

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities consisted of the following:

(\text{In thousands})

\begin{tabular}{lrrr}
 & December 31, 2016 & December 31, 2015 \\
\hline
\text{Allowance for doubtful accounts} & $48$ & $56$ \\
\text{Accrued expenses} & $7,535$ & $4,747$ \\
\text{Prepaid expenses} & - & $(1,158)$ \\
\text{Intangibles acquired} & $(76,230)$ & $(79,230)$ \\
\text{Depreciation and amortization} & $44,461$ & $39,567$ \\
\text{Stock compensation} & $8,383$ & $13,777$ \\
\text{Net operating loss carryforwards} & $13,405$ & $17,125$ \\
\text{Capital loss carryforward} & $11,125$ & $11,522$ \\
\text{Valuation allowance} & $(16,514)$ & $(15,501)$ \\
\text{Accrued earnout contingencies} & $2,669$ & $1,543$ \\
\text{Total noncurrent deferred tax liabilities} & $(5,118)$ & $(7,552)$ \\
\text{Total net deferred tax liabilities} & $0$ & $(7,552)$ \\
\hline
\end{tabular}

Total deferred tax assets and total deferred tax liabilities components of net deferred tax liabilities are as follows:
Deferred tax assets:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total noncurrent deferred assets</td>
<td>$72,517</td>
<td>$74,169</td>
</tr>
</tbody>
</table>

Deferred tax liabilities:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total noncurrent deferred liabilities</td>
<td>$ (77,635)</td>
<td>$ (81,721)</td>
</tr>
</tbody>
</table>

Total net deferred tax liabilities | $ (5,118)        | $ (7,552)        |

As of December 31, 2016 and 2015, we had net operating loss carry forwards of $7.4 million and $11.8 million, respectively, tax effected for both years, for federal income tax purposes. The federal net operating loss carry forwards are subject to the limitations under Internal Revenue Code Section 382. In addition, as of December 31, 2016 and 2015, we had net operating loss carry forwards of $3.8 million and $3.0 million, tax effected, respectively, for state income tax purposes. These federal and state net operating loss carry forwards will begin to expire in varying amounts starting in 2021. As of December 31, 2016 and 2015, the Company had a valuation allowance of $3.2 million and $2.0 million tax effected, respectively, related to state net operating loss carry forwards. As of December 31, 2016 there is a full valuation allowance of our capital loss carryforward of $11.1 million. As of December 31, 2016 there is a full valuation allowance of our foreign net operating loss carry forwards of $2.2 million, tax effected. Total valuation allowance increased $1.0 million during 2016. All the valuation allowances will be reduced when, and if, the Company determines that there is positive evidence that the loss carry forwards will be realized.

We recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more likely than not threshold, the amount recognized in the consolidated financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

As of December 31, 2016, 2015 and 2014, $3.5 million, $1.7 million and $5.2 million of our total net unrecognized tax benefits, including interest and penalties, is classified as other liabilities, and as of December 31, 2016 and 2015, $2.1 and $2.2 million, respectively, is classified as non-current deferred tax liabilities in the consolidated balance sheets.

A reconciliation of the change in beginning and ending amounts of unrecognized tax benefits is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
</tr>
<tr>
<td>Unrecognized tax benefits, beginning balance</td>
<td>$3,917</td>
</tr>
<tr>
<td>Additions for prior year tax positions</td>
<td>166</td>
</tr>
<tr>
<td>Reductions for prior year tax positions</td>
<td>(127)</td>
</tr>
<tr>
<td>Reductions for lapse in statute</td>
<td>-</td>
</tr>
<tr>
<td>Reductions for settlements</td>
<td>-</td>
</tr>
<tr>
<td>Additions for current year tax positions</td>
<td>1,495</td>
</tr>
<tr>
<td>Unrecognized tax benefits, ending balance</td>
<td>$5,451</td>
</tr>
</tbody>
</table>

During the year ended December 31, 2016, the Company recorded a net increase to unrecognized tax benefits of approximately $1.5 million. During the year ended December 31, 2015, the Company recorded a net decrease to unrecognized tax benefits of approximately $1.2 million. During the year ended 2014, the Company recorded a net increase to unrecognized tax benefits of approximately $7.8 million. A liability for unrecognized tax benefits is recorded as either a current or non-current liability, depending on whether the Company will make payments in the next twelve months.

Substantially all of the unrecognized tax benefits balance, if recognized would affect the Company’s effective income tax rate.

We recognize accrued interest and penalties related to unrecognized tax benefits as a component of our income tax expense (benefit). Accrued interest and penalties included in unrecognized tax benefits during the years ended December 31, 2016, 2015 and 2014, were $104,000, ($33,000) and ($614,000), respectively. Total accrued interest and penalties related to unrecognized tax benefits as of December 31, 2016 and 2015 are $158,000 and $54,000, respectively.

NOTE 10 – COMMITMENTS AND CONTINGENCIES

Legal Proceedings

From time to time, the Company is party to litigation and regulatory matters and claims. The Company expenses legal fees as incurred. The Company records a provision for contingent losses when it is both probable that a liability will be incurred and the amount or range of the loss can be reasonably estimated. The results of complex proceedings and reviews are difficult to predict and the Company’s view of these matters may change in the future as events related thereto unfold. Except as otherwise stated, we have concluded that we cannot estimate the reasonably possible loss or range of loss, including reasonably possible losses in excess of amounts already accrued, for each matter disclosed below. An unfavorable outcome to any legal or regulatory matter, if material, could have an adverse effect on the Company’s operations or its financial position, liquidity or results of operations.

BanxCorp Litigation

In July 2007, BanxCorp, an online publisher of rate information provided by financial institutions with respect to various financial products, filed suit against the Company in the United States District Court for the District of New Jersey alleging violations of Federal and New Jersey State antitrust laws, including the Sherman Act and the Clayton Act. BanxCorp has alleged that it has been injured as a result of monopolistic and otherwise anticompetitive conduct on the part of the Company and is seeking approximately $180 million in
compensatory damages, treble damages, and attorneys’ fees and costs. In October 2012, BanxCorp filed a Seventh Amended Complaint, alleging violations of Section 2 of the Sherman Act, Section 7 of the Clayton Act and parallel provisions of New Jersey antitrust laws, and dropping its claims under Section 1 of the Sherman Act. Discovery closed on December 21, 2012 and both parties filed motions in the first quarter of 2013 seeking summary judgment that are pending before the court. The Company will continue to vigorously defend this lawsuit. The Company cannot presently estimate the amount of loss, if any, that would result from an adverse resolution of this matter.

Securities Litigation

In October 2014, a putative class action lawsuit was brought in federal court in the United States District Court for the Southern District of Florida against the Company, certain of its current and former officers and directors, and other defendants, which is captioned The City of Los Angeles v. Bankrate, Inc., et al., No. 14-CV-81323-DMM. On November 23, 2015, the District Court dismissed an amended complaint in its entirety without prejudice for failing to adequately plead material misrepresentations or omissions, scienter, or loss causation and damages. On December 8, 2015, Lead Plaintiff filed a Second Amended Complaint alleging that the Company’s 2012, 2013, and first half of 2014 financial statements improperly recognized revenues and expenses and therefore were materially false and misleading and caused damages. Plaintiffs sought relief (including damages and rescission or rescissionary damages) under the Securities Act of 1933 based on a March 2014 secondary offering and under the Securities Exchange Act of 1934 on behalf of a proposed class consisting of all persons, other than the defendants, who purchased the Company’s securities between August 1, 2012 and October 9, 2014, inclusive. On May 17, 2016, the Company announced a proposed agreement, subject to Court approval, to settle this private securities class action against all defendants. Under the settlement, Bankrate agreed to pay a total of $20 million in cash to a Settlement Fund to resolve all claims asserted on behalf of investors who purchased or otherwise acquired Bankrate stock between October 27, 2011 and October 9, 2014. The settlement further provided that Bankrate denies all claims of wrongdoing or liability. The court granted final approval of the settlement on February 6, 2017. The Company accrued the settlement amount as of June 30, 2016 and funded approximately $6.1 million to the settlement fund. Approximately $13.8 million of the settlement fund has been funded from insurance proceeds.

DOJ Investigation

As previously reported, the DOJ has informed the Company that it is investigating the matters that were the subject of the SEC investigation settled by the Company in 2015. It is not possible to predict when the DOJ investigation will be completed, the final outcome of the investigation, and what if any actions may be taken by the DOJ.

CFPB Investigation

The Company and certain of its employees have received Civil Investigative Demands (CIDs) from the CFPB to produce certain documents and answer questions relating to the Company’s quality control process for its online mortgage rate tables. The Company has cooperated in responding to the CIDs. In late 2015, the Company received a communication from the CFPB inviting the Company to respond to the CFPB’s identified issues in the form of a Notice of Opportunity to Respond and Advise during which the CFPB identified potential claims it might bring against the Company. In early 2016, the Company submitted a response that it believes addressed the CFPB’s issues with respect to the Company’s online mortgage rate tables and its quality control processes. We are unable to predict when the CFPB investigation will be completed or the final outcome of the investigation, and cannot presently estimate the amount of loss, if any, that would result from an adverse resolution of this matter.

In addition to the above, we are also involved in other litigation and regulatory matters and claims that arise in the ordinary course of business and although we cannot be certain of the outcome of any such litigation or claims, nor the amount of damages and exposure that we could incur, we currently believe that the final disposition of such matters will not have a material effect on our business, financial position, results of operations or cash flow. Regardless of the outcome, litigation and regulatory matters can have an adverse impact on us because of investigative, defense or settlement costs, diversion of management resources and other factors.

Leases

We lease office space in certain cities in the United States and the United Kingdom. These leases are accounted for as operating leases. Total rent expense for the years ended December 31, 2016, 2015 and 2014 was approximately $3.9 million, $3.5 million and $2.9 million, respectively.

We recognize rent expense for operating leases on a straight-line basis over the applicable lease term. Certain of our office facilities’ leases contain escalation clauses, step rent provisions, lease renewals and lease incentives, including periods of free rent and construction allowances from landlords to be applied against necessary leasehold improvements. These lease incentives are treated as components of deferred rent and amortized over the term of the lease as reductions to rent expense. The lease incentives are reflected as components of other current liabilities and other liabilities on the consolidated balance sheets. We consider lease renewals in the useful life of our leasehold improvements when such renewals are reasonably assured. We take these provisions into account when calculating minimum aggregate rental commitments under non-cancelable operating leases.

Future minimum lease payments under non-cancelable operating and capital leases and having initial lease terms in excess of one year as of December 31, 2016 were:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Operating leases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$2,865</td>
</tr>
<tr>
<td>2018</td>
<td>$3,119</td>
</tr>
<tr>
<td>2019</td>
<td>$2,865</td>
</tr>
<tr>
<td>2020</td>
<td>$2,828</td>
</tr>
<tr>
<td>2021</td>
<td>$2,865</td>
</tr>
<tr>
<td>Thereafter</td>
<td>$13,434</td>
</tr>
<tr>
<td>Total minimum lease payments</td>
<td>$29,079</td>
</tr>
</tbody>
</table>

Other Commitments
We have executed employment agreements with 36 employees, including our President and Chief Executive Officer and other senior executives. Each employment agreement provides for a minimum annual base salary, an annual bonus contingent on our achieving certain performance criteria, and severance provisions ranging from six months to one year's annual base salary. Under the terms of the employment agreements, the individuals are entitled to receive minimum severance amounts of approximately $6.3 million in the aggregate as of December 31, 2016.

**Defined Contribution Plan**

We sponsor a defined contribution savings plan that provides eligible employees the ability to accumulate funds for retirement. We provide employer safe harbor contributions up to the maximum legally permitted amount per eligible participant, as specified by the IRS and our plan document. Our contributions to the plan were approximately $1.7 million, $1.4 million and $981,000 for the years ended December 31, 2016, 2015 and 2014, respectively.

**NOTE 11 – DEBT**

**Senior Notes**

The Company’s $300.0 million 6.125% senior unsecured notes due August 2018 (the “Senior Notes”) were issued in August 2013. Interest on the Senior Notes accrues daily on the outstanding principal amount thereof and is payable semi-annually, in arrears, on August 15 and February 15. On or after August 15, 2015, the Company may redeem some or all of the Senior Notes at a premium that will decrease over time as set forth in Bankrate, Inc.’s Indenture, dated as of August 7, 2013 (the “Senior Notes Indenture”). Additionally, if the Company experiences a Change of Control Triggering Event (as defined in the Senior Notes Indenture), the Company must offer to purchase all of the Senior Notes at a price in cash equal to 101% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date of purchase. The Senior Notes Indenture contains covenants (including, but not limited to, covenants restricting the payment of dividends and incurrence of additional indebtedness) and events of default customary for transactions of this type and has no financial maintenance covenant. All obligations under the Senior Notes are guaranteed by the Guarantors (as defined below).

The following table presents interest expense, amortization of original issue discount and amortization of deferred financing costs, related to the Senior Notes:

<table>
<thead>
<tr>
<th></th>
<th>Year ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Interest expense</td>
<td>$18,375</td>
</tr>
<tr>
<td>Original issue discount</td>
<td>655</td>
</tr>
<tr>
<td>Deferred financing costs</td>
<td>1,788</td>
</tr>
</tbody>
</table>

The following original issue discount and deferred financing costs related to the Senior Notes remain to be amortized:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original issue discount</td>
<td>$1,133</td>
<td>$1,788</td>
</tr>
<tr>
<td>Deferred financing costs</td>
<td>3,147</td>
<td>4,928</td>
</tr>
</tbody>
</table>

The deferred financing costs balances at December 31, 2016 and 2015 include the consent consideration paid in 2015 and 2014, pursuant to the second and third supplemental indenture described below, which was recorded as deferred financing costs and is being amortized over the remaining term of the Senior Notes.

The Company had a balance of approximately $295.7 million and $293.3 million in Senior Notes, net of amortization, as of December 31, 2016 and 2015, respectively, recorded on the accompanying consolidated balance sheets.

The following table provides contractual maturities of the Company’s corporate debt at December 31, 2016:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$</td>
</tr>
<tr>
<td>2018</td>
<td>295,721</td>
</tr>
<tr>
<td>2019</td>
<td>$</td>
</tr>
<tr>
<td>2020</td>
<td>$</td>
</tr>
<tr>
<td>2021</td>
<td>$</td>
</tr>
<tr>
<td>Thereafter</td>
<td>295,721</td>
</tr>
</tbody>
</table>

As previously reported in the Company’s Current Report on Form 8-K dated November 14, 2014, pursuant to the Second Supplemental Indenture, dated as of November 14, 2014 (the “Second Supplemental Indenture”), by and among the Company, certain subsidiaries of the Company party thereto as guarantors and Wilmington Trust, National Association, as trustee, the Company obtained an extension of the
time permitted to deliver the requisite financial information for the quarter ended September 30, 2014 and, subject to payment by the Company of an additional consent fee (as described in the Supplemental Indenture), for the year ended December 31, 2014. The Company paid this additional consent fee on March 31, 2015. In total, the Company paid $708,855 in consent fees to holders of the Senior Notes in connection with the execution and effectiveness of the Second Supplemental Indenture. As previously reported in the Company’s Current Report on Form 8-K dated May 15, 2015, pursuant to the Third Supplemental Indenture, dated as of May 11, 2015 (the “Third Supplemental Indenture”), by and among the Company, certain subsidiaries of the Company party thereto as guarantors and Wilmington Trust, National Association, as trustee, the Company obtained an extension of the time permitted to deliver the requisite financial information for the quarters ended September 30, 2014 and March 31, 2015 and for the year ended December 31, 2014. In total, the Company paid $374,000 in consent fees to holders of the Senior Notes in connection with the execution and effectiveness of the Third Supplemental Indenture.

Our Senior Notes Indenture and Revolving Credit Facility generally permit us to apply the net cash proceeds of approximately $130.0 million from the sale of our Insurance business to prepay outstanding debt and/or invest in assets useful to our business, in each case, within 365 days of our receipt of such net cash proceeds (subject, in the case of any investment, to a further 180-day extension under certain circumstances). If we do not apply such net cash proceeds in the manner and within the time period described above and the amount of unapplied net cash proceeds exceeds $10.0 million, we will be required to offer to purchase a portion of our outstanding Senior Notes using those unapplied net cash proceeds at an offer price equal to 100% of the principal amount of the Senior Notes, plus accrued and unpaid interest, if any, up to but not including, the date of purchase. As of December 31, 2016, it was determined that there were less than $10.0 million in unused net cash proceeds from the sale of our Insurance business that had not been applied as described above.

**Revolving Credit Facility**

In August 2013, the Company entered into a $70.0 million revolving facility ("Revolving Credit Facility"), maturing May 17, 2018, among the Company, as borrower, certain subsidiaries of the Company, as guarantors (the "Guarantors"), the lenders party thereto (the "Lenders"), Royal Bank of Canada, as administrative agent, and the other parties thereto. The proceeds of any loans made under the Revolving Credit Facility can be used for ongoing working capital requirements and other general corporate purposes, including the financing of capital expenditures and acquisitions.

Borrowings under the Revolving Credit Facility bear interest at a rate per annum equal to, at the Company’s option, either (i) an alternate base rate (as defined in the Revolving Credit Facility) or (ii) an adjusted LIBO rate (as defined in the Revolving Credit Facility), each calculated in a customary manner, plus applicable margin. The applicable margin is 3.00% per annum with respect to alternate base rate loans and 2.00% per annum with respect to adjusted LIBO rate loans. In addition to paying interest on the outstanding principal amount of borrowings under the Revolving Credit Facility, the Company must pay a commitment fee to the Lenders in respect of their average daily unused amount of revolving commitments at a rate that ranges from 0.375% to 0.500% per annum depending on the Company’s consolidated total leverage ratio. These commitment fees are recorded in interest expense. The Company may voluntarily prepay loans under the Revolving Credit Facility at any time without premium or penalty (subject to customary “breakage” fees in the case of Eurodollar rate loans).

The Revolving Credit Facility contains customary affirmative and negative covenants (including, but not limited to, covenants restricting the payment of dividends and incurrence of additional indebtedness) and events of default and requires the Company to comply with a maximum consolidated total leverage ratio of 4.00:1.00 as of the last day of any quarter only if the aggregate amount (without duplication) of letters of credit (other than letters of credit that are issued and not drawn to the extent such letters of credit are cash collateralized) and loans outstanding under the Revolving Credit Facility exceed, on a pro forma basis, 30% of the total revolving commitments of all Lenders at such time. The Company was in compliance with all required covenants as of December 31, 2016.

All obligations under the Revolving Credit Facility are guaranteed by the Guarantors and are secured, subject to certain exceptions, by first lien on the assets of the Company and the Guarantors.

Interest expense for the commitment fees and amortization of deferred financing costs related to the Revolving Credit Facility were as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest expense</td>
<td>$341</td>
<td>$298</td>
<td>$353</td>
</tr>
<tr>
<td>Deferred financing costs</td>
<td>339</td>
<td>339</td>
<td>339</td>
</tr>
</tbody>
</table>

The following deferred loan fees related to the Revolving Credit Facility remain to be amortized:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred financing costs</td>
<td>$450</td>
<td>$754</td>
</tr>
</tbody>
</table>

As of December 31, 2016, the Company had $69.4 million available capacity for borrowing under the Revolving Credit Facility and there were $593,000 in letters of credit issued against the facility.

On November 6, 2014, the Company announced it had obtained a waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information thereunder for the quarter ended September 30, 2014. On March 24, 2015, the Company announced it had obtained a waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information thereunder for the year ended December 31, 2014. On May 11, 2015, the Company announced it had obtained a waiver under the Revolving Credit Facility with respect to compliance with its obligation to deliver the requisite financial information thereunder for the quarter ended March 31, 2015. The Company did not pay a consent fee to the lenders under the Revolving Credit Facility in connection with any of the foregoing waivers.
NOTE 12 – ACQUISITIONS

Year Ended 2016

On June 17, 2016, we completed the acquisition of certain assets of Next Advisor, Inc. (the “Acquired NextAdvisor Business”), an online source of research and reviews of credit cards, personal finance and internet services. This acquisition was made to accelerate our business, broaden our reach and increase ways to engage consumers looking for credit cards. The results of operations of the Acquired NextAdvisor Business are being reported in our Credit Cards segment and are included in our consolidated results from the acquisition date. The acquisition is accounted for as a business combination. The acquisition accounting is preliminary and subject to change as third party valuations are not finalized.

The Company paid $63.4 million at closing, recorded $37.3 million of deferred contingent consideration, and placed $11.9 million into escrow as a deferred payment and to serve as recourse for indemnity obligations. An additional $1.3 million was paid to the seller subsequent to the closing date related to net working capital adjustments. The deferred payment is recorded in other current assets and is being amortized into compensation expense over the period earned. As of December 31, 2016, approximately $4.0 million was paid from escrow to the seller.

The transaction called for cash consideration as well as a series of contingent payments based on the achievement of Adjusted EBITDA targets. We have estimated contingent payments, which are classified as purchase consideration if made or due to the seller and as compensation if made to current employees. As part of the purchase price, the Company recorded a $37.3 million liability on the date of acquisition for the deferred contingent consideration due to seller based upon the net present value of the Company’s estimate of the future payments. Subsequent measurements are made using the same methodology. This fair value measurement represents a Level 3 measurement as it is based on significant inputs not observable in the market. Significant judgment is employed in determining the appropriateness of these assumptions as of the acquisition date. This contingent consideration has a maximum potential cashout of approximately $134.1 million if all related targets are achieved, and is payable in either cash or shares of the Company’s stock. Subsequent changes to the fair value of the contingent acquisition consideration are recorded as changes in fair value of contingent acquisition consideration; see Note 7 – Fair Value Measurement.

We recorded approximately $67.9 million in goodwill, which reflects the adjustments necessary to allocate the purchase price to the fair value of the assets acquired and the liabilities assumed and represents the expected future economic benefits from future growth arising from the Acquired NextAdvisor Business’s scale and expertise in driving traffic via sponsored content, benefits expected from using that expertise to drive traffic to other Bankrate-owned websites, and future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. We expect goodwill will be deductible for income tax purposes. The valuations used to determine the preliminary estimated fair value of the intangible assets and the resulting goodwill in the purchase price allocation principally use the discounted cash flow methodology and were made concurrent with the effective date of the acquisition. Intangible assets including trademarks and internet domain name, customer relationships, and the non-compete covenant were valued using the income approach, and the developed technology was valued using cost methodology. Approximately $30.0 million was recorded as intangible assets with estimated weighted average useful lives of 7 years, consisting of customer relationships for $22.2 million, trademarks and internet domain name for $6.2 million, non-compete covenant for $1.4 million and developed technology for $150,000. The current assets and receivables acquired and the current liabilities assumed were valued at cost, which approximates fair value.

The following table presents the preliminary, estimated fair value of assets acquired and liabilities assumed at the acquisition date:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Acquistion Date</th>
<th>Estimated Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>$</td>
<td>43</td>
</tr>
<tr>
<td>Receivables</td>
<td></td>
<td>8,409</td>
</tr>
<tr>
<td>Intangible assets</td>
<td></td>
<td>30,018</td>
</tr>
<tr>
<td>Total identifiable assets acquired</td>
<td></td>
<td>38,470</td>
</tr>
<tr>
<td>Current liabilities</td>
<td>4,342</td>
<td></td>
</tr>
<tr>
<td>Total liabilities assumed</td>
<td>4,342</td>
<td></td>
</tr>
<tr>
<td>Net assets acquired</td>
<td>34,128</td>
<td></td>
</tr>
<tr>
<td>Goodwill</td>
<td>67,893</td>
<td></td>
</tr>
<tr>
<td>Purchase price</td>
<td>$</td>
<td>102,021</td>
</tr>
</tbody>
</table>

Included in the amounts and table above, are adjustments recorded subsequent to the acquisition for approximately $1.5 million, primarily for post-closing working capital adjustments and changes in the valuation of acquired assets. The estimated weighted average amortization periods for intangible assets recorded in the acquisition are as follows:

<table>
<thead>
<tr>
<th>Weighted Average Amortization Period (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks and domain names</td>
</tr>
<tr>
<td>Customer relationships</td>
</tr>
<tr>
<td>Developed technology</td>
</tr>
<tr>
<td>Non-compete covenant</td>
</tr>
</tbody>
</table>

The amounts of revenue, net income and adjusted EBITDA generated from the date of acquisition through December 31, 2016 by the Acquired NextAdvisor Business included in our consolidated statement of comprehensive income (loss) are approximately $29.1 million, $5.3 million and $7.8 million, respectively.
Unaudited pro forma revenue, net income, weighted average shares and net income (loss) of the Company, assuming the Acquired NextAdvisor Business occurred January 1, 2015, for the year ended December 31, 2016 and 2015:

<table>
<thead>
<tr>
<th>(In thousands, except share and per share data)</th>
<th>December 31, 2016</th>
<th>December 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total revenue</td>
<td>$460,954</td>
<td>$439,632</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>($28,259)</td>
<td>$8,731</td>
</tr>
<tr>
<td>Weighted average shares:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>89,531,542</td>
<td>97,988,092</td>
</tr>
<tr>
<td>Diluted</td>
<td>89,531,542</td>
<td>100,073,688</td>
</tr>
<tr>
<td>Earnings (loss) per share:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>($0.32)</td>
<td>$0.09</td>
</tr>
<tr>
<td>Diluted</td>
<td>($0.32)</td>
<td>$0.09</td>
</tr>
</tbody>
</table>

The Acquired NextAdvisor Business results for 2015 included in the pro forma table above include a limited, one-time credit card marketing program benefit that was not expected to reoccur in 2016, and which was taken into account and discounted in the acquisition modeling.

**Year Ended 2015**

On April 1, 2015 we acquired Quizzle, LLC and during 2015 we also acquired certain assets and assumed certain liabilities of certain other entities. The acquisitions are not individually significant to the Company’s net assets and results of operations. These acquisitions had an aggregate purchase price of $40.3 million, including $6.9 million in fair value of deferred payments and $2.7 million in fair value of contingent acquisition consideration. The acquisitions were accounted for under purchase accounting and are included in our consolidated results from the acquisition dates. The financial results of the acquired businesses are immaterial individually and in aggregate to our net assets and results of operations. We recorded $21.8 million in goodwill and $19.2 million of intangible assets related to these acquisitions with estimated weighted average useful lives of 10 years, consisting of approximately $11.5 million of developed technologies, approximately $4.6 million of trademarks and domain names and approximately $3.1 million of customer relationships. We expect approximately $19.4 million of goodwill to be deductible for income tax purposes. During the year ended December 31, 2015, since each respective date of acquisition, these acquisitions contributed revenue of approximately $7.6 million.

During 2016, we recorded goodwill and intangible asset impairments to our pre-realigned Quizzle reporting unit. See Note 4 – Goodwill and Intangible Assets.

**Year Ended 2014**

**Acquisition of Caring, Inc.**

On May 1, 2014, we acquired Caring, Inc. for $53.7 million, net of cash acquired, and $4.3 million was placed in escrow to satisfy certain indemnification obligations of Caring’s shareholders. All escrow payments have been made. We recorded approximately $23.0 million in goodwill, which reflects the adjustments necessary to allocate the purchase price to the fair value of the assets acquired and the liabilities assumed. We expect goodwill will not be deductible for income tax purposes. Approximately $29.5 million was recorded as intangible assets with estimated weighted average useful lives of 9 years, consisting of an Internet domain name for $14.6 million, customer relationships for $9.9 million, and developed technologies for $5.0 million. Caring was a privately held company and the owner of Caring.com, a leading senior care resource for those seeking information and support as they care for aging family members and loved ones. This acquisition was made to complement our online publishing business and to enter a new product vertical. The results of operations of Caring are included in our consolidated results from the acquisition date. The acquisition is accounted for as a business combination.

During 2016, we recorded a goodwill impairment to our Senior Care reporting unit. See Note 4 – Goodwill and Intangible Assets.

**Acquisition of Wallaby Financial Inc.**

On December 1, 2014, we acquired Wallaby Financial Inc. for $10.0 million. The financial results of Wallaby are immaterial to our net assets and results of operations. The acquisition was accounted for as a purchase and included in our consolidated results from the acquisition date. We recorded $6.1 million in goodwill and $3.9 million in intangible assets related to the acquisition, consisting of $3.6 million of developed technologies and $250,000 of trademarks with estimated weighted average useful lives of 5 years. We expect goodwill will not be deductible for income tax purposes.

**Other**

During the year ended December 31, 2014, we acquired certain assets and assumed certain liabilities of a third party for a purchase price of approximately $9.9 million, including $1.9 million of contingent acquisition consideration. The acquisition is immaterial to our net assets and results of operations. The acquisition was accounted for as a purchase and is included in our consolidated results of operations from the acquisition date. We recorded $30,000 in goodwill and approximately $9.9 million in intangible assets with a weighted average useful life of 7 years, consisting of trademarks and domain names. We expect goodwill to be deductible for income tax purposes.

**NOTE 13 – RESTRUCTURING**

In 2015, management adopted a restructuring plan with respect to our corporate and banking segment finance operations aligned with our commitment to implement best practices, enhance internal controls and drive efficiency throughout the finance function by improving...
processes, separating corporate and business unit functions, and consolidating finance teams at a single location. During the same period, management also adopted a restructuring plan consisting of certain changes in corporate and business unit leadership in connection with further aligning Company leadership with our strategic initiatives. As part of this process, we formally communicated the termination of employment to approximately 15 employees, all of whom have been terminated. The costs associated with these initiatives primarily represented modifications of share based awards, severance, outplacement services and other costs associated with employee terminations, the majority of which have been settled in shares and cash. All restructuring costs were recorded as a Corporate expense, within the Other segment. As of December 31, 2016, no further liability remains related to this action.

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at January 1, 2015</td>
<td>$</td>
</tr>
<tr>
<td>Restructuring charges</td>
<td>5,616</td>
</tr>
<tr>
<td>Utilized</td>
<td>(3,450)</td>
</tr>
<tr>
<td>Balance at December 31, 2015</td>
<td>2,166</td>
</tr>
<tr>
<td>Restructuring charges and adj.</td>
<td>(117)</td>
</tr>
<tr>
<td>Utilized</td>
<td>(2,049)</td>
</tr>
<tr>
<td>Balance at December 31, 2016</td>
<td>$</td>
</tr>
</tbody>
</table>

**NOTE 14 – DISCONTINUED OPERATION**

In 2015 we sold our Insurance business, which constituted (i) all of the issued and outstanding capital stock of NetQuote Holdings, Inc. and (ii) all of the issued and outstanding limited liability interests of IQ Holdings, LLC, for a purchase price comprised of (i) $140.0 million in cash at closing, plus $200,000 for cash to remain at the Insurance business companies, and (ii) $23.1 million to be paid to us on the second anniversary of the closing date. The Insurance business comprised our Insurance reporting segment. The sale will allow us to focus on our core Credit Cards and Banking businesses and the growth opportunities in the Senior Care vertical. For the years ended December 31, 2015 and 2014, the results of this component have been classified as a discontinued operation through the date of sale. We realized a $9.1 million loss on the sale of the business ($8.6 million gain, net of tax), which is recognized in net loss from discontinued operation on the consolidated statement of comprehensive income (loss).

During the fourth quarter of 2015, we completed our analysis regarding being subject to sales taxes related to sourcing of certain revenue streams in one of its operating segments in certain state jurisdictions. For the year ended December 31, 2015, we recorded an $11.9 million charge within our Insurance business, which is presented as a discontinued operation in the consolidated financial statements. The majority of these sales taxes were paid as of December 31, 2015. We have indemnified the buyer of its Insurance business against this liability and as of December 31, 2015 had accrued approximately $1.9 million within other current liabilities for this sales tax liability.

During the year ended December 31, 2016, we incurred a $96,000 net loss in discontinued operation related to the previous disposal of the Insurance business. This activity primarily relates to legal and other post-closing expenses, partially offset by reimbursements from several states for previous sales tax remittances.

The following tables present the major classes of line items constituting pretax income (loss) of discontinued operation and reconcile to the net income (loss) of the discontinued operation that are presented in the consolidated statement of comprehensive income (loss):

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Revenue</td>
<td>$176,184</td>
</tr>
<tr>
<td>Costs and expenses:</td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>127,592</td>
</tr>
<tr>
<td>Other expenses</td>
<td>101,425</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>229,017</td>
</tr>
<tr>
<td>Loss before taxes</td>
<td>(52,833)</td>
</tr>
<tr>
<td>Income tax benefit</td>
<td>(14,079)</td>
</tr>
<tr>
<td>Net loss from discontinued operation</td>
<td>(38,754)</td>
</tr>
<tr>
<td>Loss on sale of discontinued operation</td>
<td>(9,114)</td>
</tr>
<tr>
<td>Income tax benefit</td>
<td>(17,680)</td>
</tr>
<tr>
<td>Net gain on sale of discontinued operation</td>
<td>8,566</td>
</tr>
<tr>
<td>Net loss on discontinued operation</td>
<td>(30,188)</td>
</tr>
</tbody>
</table>

The following tables present the major cash flow components of discontinued operation:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Year ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Depreciation</td>
<td>$3,414</td>
</tr>
</tbody>
</table>
Amortization 20,727 21,035
Goodwill impairment 35,000 -
Stock compensation expense 3,864 3,197
Capital expenditures 5,328 5,134

NOTE 15 – QUARTERLY FINANCIAL DATA (unaudited)

Provided below are selected unaudited quarterly financial data for 2016 and 2015. The information has been derived from our unaudited condensed consolidated financial statements. In the opinion of management, the unaudited condensed consolidated financial statements have been prepared on a basis consistent with the consolidated financial statements which appear elsewhere in this Annual Report on Form 10-K and include all adjustments necessary for a fair statement of the financial position and results of operations for such unaudited periods. Historical results are not necessarily indicative of results to be expected in the future.

The earnings per share information is calculated independently for each quarter based on the weighted average common stock and common stock equivalents outstanding, which may fluctuate, based on factors such as the number of shares in a period that are issued, vested, or repurchased, our quarterly income levels and our stock’s market prices. Therefore, the sum of the quarters’ per share information may not equal the annual amount presented on the consolidated statements of operations.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$93,478</td>
<td>$98,302</td>
<td>$128,798</td>
<td>$113,583</td>
<td>$89,226</td>
<td>$89,333</td>
<td>$99,659</td>
<td>$93,746</td>
</tr>
<tr>
<td>Net income (loss) continuing operations</td>
<td>$722</td>
<td>$(41,309)</td>
<td>$10,782</td>
<td>$(4,233)</td>
<td>$4,382</td>
<td>$2,112</td>
<td>$5,665</td>
<td>$4,683</td>
</tr>
<tr>
<td>Net income (loss) discontinued operation</td>
<td>$(439)</td>
<td>$353</td>
<td>$(96)</td>
<td>$86</td>
<td>$571</td>
<td>$(1,792)</td>
<td>$(29,056)</td>
<td>$89</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$283</td>
<td>$(40,956)</td>
<td>$10,686</td>
<td>$(4,147)</td>
<td>$4,953</td>
<td>$320</td>
<td>$(23,391)</td>
<td>$4,772</td>
</tr>
</tbody>
</table>

Basic and diluted net income (loss) per share:

<table>
<thead>
<tr>
<th>Net income (loss) continuing operations:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
</tr>
<tr>
<td>Diluted</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net income (loss) discontinued operation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
</tr>
<tr>
<td>Diluted</td>
</tr>
</tbody>
</table>

(a) The first quarter 2016 includes an $851,000 insurance claim that was reimbursed for a previously settled and paid legal settlement.
(b) Results for the second quarter 2016 include the NextAdvisor acquisition; a $20.0 million expense for a proposed settlement of the private securities class action lawsuit pending against the Company (approximately 70% of which to be funded by insurers); and a $25.0 million impairment of goodwill in our Banking reporting unit.
(c) Results for the third quarter 2016 include a benefit of $13.8 million for insurance proceeds for the proposed settlement of the private securities class action lawsuit against the Company; a $4.2 million estimated impairment of goodwill in our Quizze reporting unit; and an expense of $2.9 million for a change in estimate as part of the change in fair value of contingent acquisition consideration.
(d) Results for the fourth quarter 2016 include a $2.4 million impairment of goodwill and a $7.5 million impairment of intangible assets in our Quizze reporting unit; a $4.0 million impairment of goodwill in our Senior Care reporting unit; and a benefit of $10.6 million for a change in estimate as part of the change in fair value of contingent acquisition consideration.
(e) Results for the third quarter 2015 include a $35.0 million impairment of goodwill in the former Insurance reporting unit, which is classified as a discontinued operation.
(f) During the fourth quarter 2015, we completed the sale of our Insurance business and recorded a loss on sale within loss on discontinued operation.
(g) As we incurred a net loss from continuing operations for this period, all outstanding stock options, restricted and performance stock awards have an anti-dilutive effect and therefore are excluded from the computation of diluted weighted average shares outstanding. Accordingly, basic and diluted weighted average shares outstanding are equal for such period.
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 have established disclosure controls and procedures to ensure that material information relating to the Company is made known to the officers who certify the Company’s financial reports and to other members of senior management and the board of directors. Management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2016. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Management, including our Chief Executive Officer and Chief Financial Officer, does not expect our disclosure controls and procedures will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of internal controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Also, any evaluation of the effectiveness of controls in future periods are subject to the risk that those internal controls may become inadequate because of changes in business conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Based on the evaluation of our disclosure controls and procedures as of December 31, 2016, our CEO and CFO concluded that our disclosure controls and procedures were not effective at a reasonable assurance level as of December 31, 2016 as a result of the material weakness in Company’s internal control described below.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934. Our management, including our CEO and CFO, assessed the effectiveness of Bankrate’s internal control over financial reporting as of December 31, 2016 based on the framework in the 2013 Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on the results of the assessment, we concluded that there was a material weakness in the operating effectiveness of our internal control over financial reporting, as described below under “Description of material weakness”.

The scope of management’s assessment of the effectiveness of our internal controls over financial reporting included all of our consolidated operations except for the operations of NextAdvisor, which we acquired in the second quarter of 2016. NextAdvisor’s operations represented approximately 10% of our consolidated total assets and approximately 7% of our consolidated net revenues as of and for the year ended December 31, 2016.

Management has concluded that, notwithstanding the material weakness described below, the Company’s consolidated financial statements in this Form 10-K fairly present in all material respects our financial condition, results of operations and cash flows in conformity with GAAP.

The effectiveness of our internal control over financial reporting as of December 31, 2016 has been audited by Grant Thornton LLP, an independent registered public accounting firm as stated in their report which appears in Item 8 of this Annual Report on Form 10-K.

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

In our Annual Reports on Form 10-K for the years ended December 31, 2014 and December 31, 2015, we identified certain deficiencies related to (1) our control environment and (2) our controls over certain of our accounting processes (our “Prior Material Weakness”). Following the end of the fourth quarter of 2016, we completed our testing of internal controls over financial reporting and determined that controls and procedures over the areas affected by the Prior Material Weakness were operating effectively. Management has therefore concluded that the Prior Material Weakness has been remediated as of December 31, 2016.

However, in connection with our acquisition accounting for our 2016 acquisition of the NextAdvisor business, and in our accounting for the impairment of infinite lived assets in the 2016 fiscal year in our Quizze business, management and our independent registered public accounting firm identified a material weakness in our internal controls. Specifically, information used for a key input in the valuation of the contingent consideration liability by a third party valuation specialist in connection with the NextAdvisor acquisition was not updated on a timely basis, which resulted from a control failure in the process for validating the key inputs. In addition, a calculation error was discovered in the valuation report prepared by a third party valuation specialist that was a key input in the valuation of the impairment of
finite lived assets and goodwill of our Quizzle business. Following identification of these issues, management recorded the necessary adjustments and they are reflected in this Annual Report on Form 10-K. Although these errors did not result in a material misstatement of our current or prior period consolidated financial statements, the control deficiency around validating key inputs to the valuation reports created a reasonable possibility that a material misstatement of our financial statements would not have been prevented or detected on a timely basis. Accordingly, management has concluded that this control deficiency constitutes a material weakness.

Remediation. Following identification of this control deficiency, management is implementing modifications to better ensure that the Company has validated all inputs used for, and all calculations performed in, valuation reports prepared by third party valuation specialists. The material weakness in our internal control over financial reporting will not be considered remediated until these modifications are implemented, in operation for a sufficient period of time, tested, and concluded by management to be designed and operating effectively. In addition, as we continue to evaluate and work to improve our internal control over financial reporting, management may determine to take additional measures to address control deficiencies or determine to modify our remediation plan. Management will test and evaluate the implementation of these modifications during 2017 to ascertain whether they are designed and operating effectively to provide reasonable assurance that they will prevent or detect a material misstatement in the Company’s financial statements.

Changes in internal control over financial reporting

Other than changes related to completing the remediation actions outlined in our Annual Report on Form 10-K for the year ended December 31, 2015 under Item 9A, and subsequent Quarterly Reports under Item 4, for our Prior Material Weakness, there was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2016 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None
PART III.

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item is incorporated by reference to the registrant’s proxy Statement for its 2017 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year ended December 31, 2016.

Item 11. Executive Compensation

The information required by this Item is incorporated by reference to the registrant’s proxy Statement for its 2017 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year ended December 31, 2016.


The information required by this Item is incorporated by reference to the registrant’s proxy Statement for its 2017 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year ended December 31, 2016.

Item 13. Certain Relationships and Related Transactions and Director Independence

The information required by this Item is incorporated by reference to the registrant’s proxy Statement for its 2017 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year ended December 31, 2016.

Item 14. Principal Accountant Fees and Services

The information required by this Item is incorporated by reference to the registrant’s proxy Statement for its 2017 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year ended December 31, 2016.

PART IV.

Item 15. Exhibits and Financial Statement Schedules

Documents Filed as Part of This Report:
(1) Financial Statements.
See Index to Financial Statements under Item 8.

(2) Financial Statement Schedules.
All financial statement schedules have been omitted since the required information is not applicable or is included in the consolidated financial statements or notes thereto.

(3) Exhibits.
The exhibits to this report are listed below.
### Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York.

**Bankrate, Inc.**

**Date:** March 22, 2017  
**By:** /s/ Steven D. Barnhart  
Steven D. Barnhart  
Senior Vice President and Chief Financial Officer

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

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ Kenneth S. Esterow</td>
<td>President, Chief Executive Officer and Director (Principal Executive Officer)</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>Kenneth S. Esterow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ Steven D. Barnhart</td>
<td>Senior Vice President and Chief Financial Officer (Principal Financial Officer)</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>Steven D. Barnhart</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ Janet M. Gunzburg</td>
<td>Corporate Controller (Principal Accounting Officer)</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>Janet M. Gunzburg</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Peter C. Morse</td>
<td>Chairman of the Board and Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Seth Brody</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Michael J. Kelly</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Sree Kotay</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Christine Petersen</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Richard J. Pinola</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>* Mitch Truwit</td>
<td>Director</td>
<td>March 22, 2017</td>
</tr>
<tr>
<td>/s/ Steven D. Barnhart</td>
<td>Attorney-in-fact</td>
<td></td>
</tr>
<tr>
<td>*Steven D. Barnhart</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
<td></td>
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</tr>
<tr>
<td>2.1</td>
<td>Equity Purchase Agreement, dated as of November 5, 2015 between Bankrate, Inc. and All Web Leads, Inc. (incorporated by reference to Exhibit 2.1 of the Company’s Annual Report on Form 10-K filed with the SEC on March 9, 2016)</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Second Amended and Restated Certificate of Incorporation of Bankrate, Inc. (incorporated by reference to the Company’s Registration Statement on Form S-8 (333-175000))</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Second Amended and Restated Bylaws of Bankrate, Inc. (incorporated by reference to the Company’s Registration Statement on Form S-8 (333-175000))</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Indenture, dated as of August 7, 2013, among the Company, the Guarantors and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K filed with the SEC on August 13, 2013)</td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>Form of common stock certificate of Bankrate, Inc. (incorporated by reference to Exhibit 4.7 of the Company’s Registration Statement on Form S-1 (333-173550))</td>
<td></td>
</tr>
<tr>
<td>4.3</td>
<td>Form of VCOC Investors’ Rights Agreement (incorporated by reference to Exhibit 4.8 of the Company’s Registration Statement on Form S-1 (333-173550))</td>
<td></td>
</tr>
<tr>
<td>4.4</td>
<td>Supplemental Indenture dated May 30, 2014 (incorporated by reference to Exhibit 4.1 of the Company’s Quarterly Report on Form 10-Q filed with the SEC on August 8, 2014)</td>
<td></td>
</tr>
<tr>
<td>4.5</td>
<td>Supplemental Indenture, dated as of November 14, 2014 among Bankrate, Inc., the guarantors party thereto and Wilmington Trust, National Association, as trustee, relating to the 6.125% Senior Notes due 2018 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K filed with the SEC on November 18, 2014)</td>
<td></td>
</tr>
<tr>
<td>4.6</td>
<td>Supplemental Indenture, dated as of May 11, 2015 among Bankrate, Inc., the guarantors party thereto and Wilmington Trust, National Association, as trustee, relating to the 6.125% Senior Notes due 2018. (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K filed with the SEC on May 15, 2015)</td>
<td></td>
</tr>
<tr>
<td>10.1</td>
<td>Executive Agreement by and between Kenneth S. Esterow and Bankrate, Inc. (incorporated by reference to Exhibit 10.33 of Bankrate’s Current Report on Form 8-K filed with the SEC on September 6, 2013)</td>
<td></td>
</tr>
<tr>
<td>10.2</td>
<td>Amendment to Executive Agreement between Bankrate, Inc. and Kenneth S. Esterow, dated December 31, 2013 (incorporated by reference to Exhibit 10.15 to the Company’s Annual Report Form 10-K filed with the SEC on February 27, 2014)</td>
<td></td>
</tr>
<tr>
<td>10.3</td>
<td>Form of Stock Option Agreement (incorporated by reference to Exhibit 10.34 of the Company’s Quarterly Report on Form 10-Q filed with the SEC on November 7, 2013)</td>
<td></td>
</tr>
<tr>
<td>10.4</td>
<td>Form of Director Restricted Stock Agreement (incorporated by reference to Exhibit 10.11 of the Company’s Annual Report on Form 10-K filed with the SEC on June 18, 2015)</td>
<td></td>
</tr>
<tr>
<td>10.5</td>
<td>Fourth Amended and Restated Stockholders Agreement (incorporated by reference to the Company’s Registration Statement on Form S-1 (333-173550))</td>
<td></td>
</tr>
<tr>
<td>10.6</td>
<td>Form of Lease Agreement between Echelon Holdings, Ltd. and Bankrate, Inc., dated March 14, 2013 (incorporated by reference to Exhibit 10.23 of the Company’s Quarterly Report on Form 10-Q filed with the SEC on August 8, 2013)</td>
<td></td>
</tr>
<tr>
<td>10.7</td>
<td>Bankrate, Inc. 2011 Equity Compensation Plan (incorporated by reference to the Company’s Registration Statement on Form S-8 (333-175000))</td>
<td></td>
</tr>
<tr>
<td>10.8</td>
<td>Form of Director Indemnification Agreement between Bankrate, Inc., and members of the management (incorporated by reference to the Company’s Registration Statement on Form S-1 (333-173550))</td>
<td></td>
</tr>
<tr>
<td>10.9</td>
<td>Revolving Credit Facility, dated as of August 7, 2013, among Bankrate, Inc., the Guarantors, the lenders party thereto, Royal Bank of Canada as administrative agent, and the other parties thereto (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the SEC on August 13, 2013)</td>
<td></td>
</tr>
<tr>
<td>10.10</td>
<td>Letter Agreement, dated September 14, 2014, by and between Bankrate, Inc. and Steven D. Barnhart (incorporated by reference to Exhibit 10.1 of Company’s Current Report on Form 8-K filed with the SEC on September 15, 2014)</td>
<td></td>
</tr>
<tr>
<td>10.11</td>
<td>Executive Agreement between Bankrate, Inc. and Christopher Speltz, dated March 3, 2014 (incorporated by reference to Exhibit 10.2 of the Company’s Quarterly Report on Form 10-Q filed with the SEC on May 8, 2014)</td>
<td></td>
</tr>
<tr>
<td>10.12</td>
<td>Form of 2014 Restricted Stock Agreement (incorporated by reference to Exhibit 10.3 of the Company’s Quarterly Report on Form 10-Q filed with the SEC on May 8, 2014)</td>
<td></td>
</tr>
<tr>
<td>10.15</td>
<td>Form of 2015 Performance-Based Restricted Stock Agreement (incorporated by reference to Exhibit 10.28 of the Company’s Annual Report on Form 10-K filed with the SEC on June 18, 2015)</td>
<td></td>
</tr>
<tr>
<td>10.16</td>
<td>Executive Agreement, dated March 12, 2015, between Steven D. Barnhart and Bankrate, Inc. (incorporated by reference to Exhibit 10.1 of Company’s Current Report on Form 8-K filed with the SEC on March 17, 2015)</td>
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</tr>
<tr>
<td>10.17</td>
<td>Form of Lease Agreement between Broadway 52ND L.P. and Bankrate, Inc. dated March 15, 2016</td>
<td></td>
</tr>
<tr>
<td>10.18</td>
<td>Form of Lease Agreement by and between 3801 PGA Acquisition Company and Bankrate, Inc., dated August 8, 2014 (incorporated by reference to Exhibit 10.31 of the Company’s Annual Report on Form 10-K filed with the SEC on June 18, 2015)</td>
<td></td>
</tr>
<tr>
<td>10.19</td>
<td>Form of Bankrate, Inc. 2015 Equity Compensation Plan (incorporated by reference to the Company’s Registration Statement on Form S-8 filed with the SEC on August 26, 2015)</td>
<td></td>
</tr>
<tr>
<td>10.20</td>
<td>Bankrate, Inc. 2015 Short-Term Compensation Plan (incorporated by reference to Exhibit 10.2 of the Company’s Current Report on Form 8-K filed with the SEC on August 14, 2015)</td>
<td></td>
</tr>
</tbody>
</table>
Executive agreement between Bankrate, Inc. and Kenneth Scott Kim, dated September 14, 2015 (incorporated by reference to the Company’s September 30, 2015 Quarterly Report on Form 10-Q filed with the SEC on November 6, 2015)

Executive Employment Agreement, dated as of March 3, 2014, by and between Bankrate, Inc. and James R. Gilmartin

Letter Agreement, dated March 10, 2016, between Bankrate, Inc. and Ben Holding S.à r.l. (incorporated by reference to Exhibit 10.1 the Company’s Current Report on Form 10-Q filed with the SEC on May 9, 2016)

Form of 2016 Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.2 the Company’s Current Report on Form 10-Q filed with the SEC on May 9, 2016)

Form of 2016 Performance Share Unit Agreement (incorporated by reference to Exhibit 10.3 the Company’s Current Report on Form 10-Q filed with the SEC on May 9, 2016)

Registration Rights Agreement, dated as of June 17, 2016, by and between Bankrate, Inc. and Next Advisor, Inc. (incorporated by reference to Exhibit 10.1 the Company’s Current Report on Form 8-K filed with the SEC on June 23, 2016)

Code of Business Conduct and Ethics (incorporated by reference to the Company’s Current Report on Form 8-K filed with the SEC on January 22, 2016)

List of Subsidiaries of Bankrate, Inc.

Consent of Grant Thornton LLP

Power of Attorney

Certification of Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

Certification of Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Certification of Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Ex. 101.INS XBRL Instance Document
Ex. 101.SCH XBRL Taxonomy Extension Schema Document
Ex. 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
Ex. 101.LAB XBRL Taxonomy Extension Label Linkbase Document
Ex. 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document
Ex. 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
AGREEMENT OF LEASE

Between

BROADWAY 52ND L.P.,
Owner

and

BANKRATE, INC.,
Tenant

Premises
Entire Twenty-Second (22nd) Floor

1675 Broadway
New York, New York

Dated as of March 15, 2016
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| EXHIBIT 5 | Finishes |

00326697.6 -1-
LEASE dated as of the 15th day of March, 2016, between BROADWAY 52ND L.P., a Delaware limited partnership having its principal office at 345 Park Avenue, Borough of Manhattan, City, County, and State of New York, 10154, as landlord (referred to as “Owner”), and BANKRATE, INC., a Delaware corporation having its principal office at 477 Madison Avenue, New York, NY 10022, as tenant (referred to as “Tenant”).

WITNESSETH:

Owner and Tenant hereby covenant and agree as follows:

ARTICLE 1

DEMISED PREMISES, TERM, RENTS

Section 1.01. Demised Premises: Owner hereby leases to Tenant and Tenant hereby hires from Owner the entire twenty-second (22th) floor in the building located on the northwest corner of Broadway and West 52nd Street and known as 1675 Broadway and 225 West 52nd Street, in the Borough of Manhattan, City of New York (said building is referred to as the “Building”); and the Building together with the plot of land upon which it stands and all other land and development rights demised in the Ground and Development Rights Lease referred to in Article 7 is referred to collectively as the “Real Property”), at the annual rental rate or rates set forth in Section 1.03, and upon and subject to all of the terms, covenants and conditions contained in this Lease. The premises leased to Tenant, together with all appurtenances, fixtures, improvements, additions and other property attached thereto or installed therein at the commencement of, or at any time during, the term of this Lease, other than Tenant’s Personal Property (as defined in Article 4), are referred to, collectively, as the “Demised Premises”. Owner and Tenant agree that the Demised Premises is deemed to contain 24,195 rentable square feet.

Section 1.02. Demised Term: A. The Demised Premises are leased for a term (referred to as the “Demised Term”) to commence on the date hereof and to end on the last day of the calendar month in which the date immediately preceding the eleventh (11th) anniversary of the date hereof shall occur, unless the Demised Term shall sooner terminate pursuant to any of the terms, covenants or conditions of this Lease or pursuant to law. Owner shall deliver possession of the Demised Premises to Tenant as of the date hereof (meaning keys are available to Tenant at the Building office).

B. The date upon which the Demised Term shall commence pursuant to Subsection A of this Section is referred to as the “Commencement Date”, and the date fixed pursuant to said Subsection A as the date upon which the Demised Term shall end is referred to as the “Expiration Date”.

C. Tenant waives any right to rescind this Lease under Section 233-a of the New York Real Property Law or any successor statute of similar import then in force and further waives the right to recover any damages which may result from Owner’s failure to deliver possession of the Demised Premises on the date set forth in Subsection A of this Section for the commencement of the Demised Term.

Section 1.03. Fixed Rent: A. This Lease is made at the following annual rental rates (referred to as “Fixed Rent”):

1. ONE MILLION FIVE HUNDRED NINETY-SIX THOUSAND EIGHT HUNDRED SEVENTY and 00/100 DOLLARS ($1,596,870.00) with respect to the period (referred to as the “First Rent Period”) from the Commencement Date to and including the last day of the calendar month in which the date immediately preceding the six (6) year anniversary of the Commencement Date shall occur, subject to the terms and conditions of Section 1.05 hereof; and

2. ONE MILLION SEVEN HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED FORTY-FIVE and 00/100 DOLLARS ($1,717,845.00) with respect to the remainder of the Demised Term (referred to as the “Second Rent Period”).

B. The Fixed Rent, any increases in the Fixed Rent and any additional rent payable pursuant to the provisions of this Lease shall be payable by Tenant to Owner at its office (or at such other place as Owner may designate in a notice to Tenant) in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment or by Tenant’s good check drawn on a bank or trust company whose principal office is located in New York City and which is a member of The Clearing House Association L.L.C. without prior demand therefor and without any offset or deduction whatsoever except as otherwise specifically provided in this Lease. Notwithstanding the foregoing, Tenant may pay the monthly installments of Fixed Rent set forth in this Section 1.03B, and any increases in Fixed Rent pursuant to Article 23 which are billed to Tenant at the same time as such monthly installments of Fixed Rent, and any additional rent then due and payable by wire transfer to the account of Owner, provided that (a) Tenant shall give Owner twenty (20) days’ prior written notice of Tenant’s intent to pay such sums via wire transfer at the time Tenant first elects to do same, (b) Tenant shall give a confirmation of such wire transfer as soon as possible to Owner’s e-mail address wireflag@rudin.com (or any other e-mail address of which Owner gives Tenant notice), and (c) such wire transfer shall be received by Owner no later than two (2) days after the date upon which such sums are due and payable. The Fixed Rent shall be payable in equal monthly installments in advance, on the first (1st) day of each month during the Demised Term (except as otherwise provided in Subsection C of this Section) as follows:

1. ONE HUNDRED THIRTY-THREE THOUSAND SEVENTY-TWO and 50/100 DOLLARS ($133,072.50) with respect to the First Rent Period; and
2. ONE HUNDRED FORTY-THREE THOUSAND ONE HUNDRED FIFTY-THREE and 75/100 DOLLARS ($143,153.75) with respect to the Second Rent Period.

C. The sum of ONE HUNDRED THIRTY-THREE THOUSAND SEVENTY-TWO and 50/100 DOLLARS ($133,072.50), representing the installment of Fixed Rent for the first (1st) full calendar month of the Demised Term after the expiration of the Rent Holiday Period (as hereinafter defined), is due and payable at the time of the execution and delivery of this Lease. In the event that the Rent Commencement Date (as hereinafter defined) shall occur on a date other than the first (1st) day of any calendar month, Tenant shall pay to Owner, on the first (1st) day of the month next succeeding the month during which the Rent Commencement Date shall occur, a sum equal to the per diem Fixed Rent for such month, multiplied by the number of calendar days in the period from the Rent Commencement Date to the last day of the month in which the Rent Commencement Date shall occur, both inclusive. Such payment, together with the sum paid by Tenant upon the execution of this Lease, shall constitute payment of the Fixed Rent for the period from the Rent Commencement Date to and including the last day of the next succeeding calendar month.

D. If Tenant shall have accessed, used or occupied all or any part of the Demised Premises prior to the Commencement Date, such access, use or occupancy shall be deemed to be under all of the terms, covenants and conditions of this Lease, including, without limitation, the provisions of Section 19.02 of this Lease (other than the covenant to pay Fixed Rent) for the period from the commencement of said access, use or occupancy to and including the date immediately preceding the Commencement Date, without, however, affecting the Expiration Date. The provisions of the foregoing sentence shall not be deemed to give to Tenant any right to access, use or occupy all or any part of the Demised Premises prior to the Commencement Date without the consent of Owner.

Section 1.04. Tenant's General Covenant: Tenant covenants (i) to pay the Fixed Rent, any increases in the Fixed Rent, and any additional rent payable pursuant to the provisions of this Lease, and (ii) to observe and perform, and to permit no violation of, the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed.

Section 1.05. Rent Holiday: Tenant shall be entitled to a rent holiday and shall not be required to pay any portion of the Fixed Rent or increases therein pursuant to Article 23 with respect to the period (the “Rent Holiday Period”) commencing on the Commencement Date and ending on the date immediately preceding the day twelve (12) months immediately following the Commencement Date but during such period of twelve (12) months Tenant shall otherwise be required to comply with all of the other terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed. The date next following the expiration of the Rent Holiday Period is referred to as the “Rent Commencement Date”. The Rent Commencement Date may be subject to extension as provided in Section 12.02D of this Lease.

ARTICLE 2
USE AND OCCUPANCY

Section 2.01. General Covenant of Use: Tenant shall use and occupy the Demised Premises for the following purpose: general, executive and administrative offices and Tenant may use reasonable portions of the Demised Premises for other uses reasonably ancillary to such general, executive and administrative office use, provided that any such ancillary uses do not violate the certificate of occupancy for the Building or Legal Requirements (as defined in Section 6.01).

Section 2.02. No Adverse Use: Tenant shall not use or occupy, or permit the use or occupancy of, the Demised Premises or any part thereof, for any purpose other than the purpose specifically set forth in Section 2.01, or in any manner which, in Owner’s reasonable judgment, (a) shall adversely affect or interfere with (i) any services required to be furnished by Owner to Tenant or to any other tenant or occupant of the Building, or (ii) the proper and economical rendition of any such service, or (iii) the use or enjoyment of any part of the Building by any other tenant or occupant, or (b) shall tend to impair the character or dignity of the Building.

Section 2.03. Pantry Use: Tenant may not undertake any “cooking” activities in the Demised Premises or have a kitchen therein, but Tenant may have a pantry in the Demised Premises for use by Tenant’s employees and guests and may use therein a dishwasher (provided the use of an ordinary kitchen grade type dishwasher shall be considered ordinary water consumption for the purpose of Section 29.05, but the use of an industrial or commercial type dishwasher shall not be considered ordinary water consumption) hot plates, refrigerators, freezers, sinks, toaster ovens and microwave ovens, provided that no such use shall require use of a flue or other means of venting, a rotocloner, or similar type equipment by reason of cooking, frying or otherwise and that Tenant also make such Alterations as are necessary in Owner’s reasonable judgment to prevent noise, vibrations, water, or odors from such equipment from interfering with the Building systems or use or occupancy or enjoyment of the Building by Owner or other tenants, including, without limitation, equipping any and all water piping with spill protection and alarming reasonably acceptable to Owner.

ARTICLE 3
ALTERATIONS

Section 3.01. General Alteration Covenants: Tenant shall not make or perform, or permit the
making or performance of, any alterations, installations, decorations, improvements, additions or other physical changes in or about the Demised Premises (referred to collectively, as “Alterations” and individually as an “Alteration”) without Owner’s prior consent in each instance. Owner agrees not unreasonably to withhold, delay or condition its consent to any non-structural Alterations proposed to be made by Tenant to adapt the Demised Premises for Tenant’s business purposes. Owner agrees that Tenant may, without Owner’s prior consent, make Alterations which are merely decorative or cosmetic changes or other non-structural Alterations in the Demised Premises, provided that the estimated cost of same constituting a single project shall not exceed the sum of SEVENTY-FIVE THOUSAND and 00/100 DOLLARS ($75,000.00) and the same shall not affect the electrical system (as opposed to fixtures, with it understood that Tenant shall not be entitled to remove, relocate or add to the same), plumbing system (as opposed to fixtures, with it understood that Tenant shall not be entitled to remove, relocate or add to the same), heating, ventilation, air-conditioning or any other Building system or any portion of the Building outside of the Demised Premises (any such merely decorative or cosmetic Alteration meeting the aforesaid criteria is referred to as a “Decoration”, and any such other non-structural Alteration meeting the aforesaid criteria is referred to as a “Qualified Non-Structural Alteration”). Although Owner’s consent shall not be required with respect to whether Tenant may perform any Qualified Non-Structural Alteration, at least ten (10) days prior to the commencement of such work, Tenant shall submit to Owner detailed plans and specifications as required under Section I below to enable Owner to determine the nature and extent of such work and to allow Owner to review the manner in which any such proposed Qualified Non-Structural Alterations are to be performed. Notwithstanding the foregoing provisions of this Section or Owner’s consent to any Alterations, all Alterations shall be made and performed in conformity with and subject to the following provisions:

A. All Alterations shall be made and performed at Tenant’s sole cost and expense, subject to Owner’s Work Contribution (as defined in Section 3.08 hereof), and at such time and in such manner as Owner may, from time to time, reasonably designate;

B. No Alteration shall adversely affect the structural integrity of the Building;

C. Alterations shall be made only by contractors or mechanics approved by Owner, such approval not to be unreasonably withheld, conditioned or delayed (notwithstanding the foregoing, all Alterations requiring mechanics in trades with respect to which Owner has adopted or may hereafter adopt a list or lists of approved contractors, which list or lists shall include at least five (5) contractors per trade, shall be made only by contractors selected by Tenant from such list or lists and Owner shall have sole discretion with respect to the contractor performing connections to the Building Class E Fire Alarm and Communication system, with Owner agreeing to cause such contractor performing connections to the Class E Fire Alarm and Communication System shall charge commercially reasonable rates);

D. No Alteration shall affect any part of the Building other than the Demised Premises or adversely affect any service required to be furnished by Owner to Tenant or to any other tenant or occupant of the Building (including, without limitation, the Building-wide standard systems required to provide elevator, heat, ventilation, air-conditioning and electrical and plumbing services in the Building);

E. No Alteration shall reduce the value or utility of the Building or any portion thereof;

F. No Alteration shall affect the Certificate of Occupancy for the Building or the Demised Premises;

G. No Alteration shall affect the outside appearance of the Building or the color or style of any venetian blinds (except that Tenant may remove any venetian blinds provided that they are promptly replaced by Tenant with Building standard blinds);

H. All business machines and mechanical equipment shall be placed and maintained by Tenant in settings sufficient, in Owner’s judgment, to absorb and prevent vibration, noise and annoyance to other tenants or occupants of the Building;

I. Tenant shall submit to Owner detailed plans and specifications stamped by Tenant’s architect (including layout, architectural, mechanical and structural drawings) for each proposed Alteration and shall not commence any such Alteration without first obtaining Owner’s approval of such plans and specifications, which approval shall not be unreasonably withheld or delayed with respect to Alterations to which Owner’s consent is not required or to which Owner has agreed hereunder to not unreasonably withhold consent. If detailed plans and specifications (i) would not, in accordance with good construction practice typically be prepared for such proposed Qualified Non-Structural Alteration, (ii) are not prepared by or on behalf of Tenant and (iii) are not required to be filed with any Governmental Authority in connection with obtaining permits required to perform the same, then in lieu of submitting detailed plans and specifications, and notwithstanding the terms and conditions of this Subsection I, Tenant shall submit detailed information (along with any existing more general plans or drawings) to enable Owner to determine the nature and extent of the work proposed to be performed. Following the completion of each Alteration, Tenant shall submit to Owner a computerized “as built” drawing file for the Demised Premises (or if the Demised Premises comprise more than one (1) floor, for each floor of the Demised Premises being altered); such file will be in DXF format and contain, on a separate layer, all ceiling-height partitions and doors within the Demised Premises (or if the Demised Premises comprise more than one (1) floor, within each floor of the Demised Premises being altered); Owner shall respond to Tenant’s request for approval of any plans and specifications submitted by Owner to Tenant with respect to any Alterations within fifteen (15) business days of the submission (or ten (10) business days of any resubmission), and if Owner shall withhold its approval, it shall notify Tenant of its reasons therefore;

J. Prior to the commencement of each proposed
Alteration, Tenant shall have procured and paid for and exhibited to Owner, so far as the same may be required from time to time, all permits, approvals and authorizations of all Governmental Authorities (as defined in Section 6.01.) having or claiming jurisdiction;

K. Prior to the commencement by each worker of its portion of a proposed Alteration, Tenant shall furnish to Owner duplicate original policies of workmen’s compensation insurance covering such persons to be employed in connection with such portion of the Alteration, including those to be employed by all contractors and subcontractors, and of commercial general liability insurance (including property damage coverage) in which Owner, its agents, the holder of any Mortgage (as defined in Section 7.01.) and any lessor under any Superior Lease (as defined in Section 7.01.) shall be named as parties insured, which policies shall be issued by companies, and shall be in form and amounts, satisfactory to Owner and shall be maintained by Tenant until the completion of such Alteration;

L. In the event Owner or its agents employ any independent architect or engineer to examine any plans or specifications submitted by Tenant to Owner in connection with any proposed Alteration, Tenant agrees to pay to Owner a sum equal to any reasonable out-of-pocket fees and expenses incurred by Owner in connection therewith; however, in no event shall Owner impose any charge for its internal review of any plans or specifications or charge any supervisory or similar fees in connection with Alterations. Reasonable substantiation for such fees shall be furnished to Tenant upon request;

M. All fireproof wood test reports, electrical and air conditioning certificates, and all other permits, approvals and certificates required by all Governmental Authorities shall be timely obtained by Tenant and submitted to Owner;

N. All Alterations, once commenced, shall be made promptly and in a good and workmanlike manner;

O. Notwithstanding Owner’s approval of plans and specifications for any Alteration, all Alterations shall be made and performed in full compliance with all Legal Requirements and with all applicable rules, orders, regulations and requirements of the New York Board of Fire Underwriters and the New York Fire Insurance Rating Organization or any similar body;

P. All Alterations shall be made and performed in accordance with the Building Rules and Building Rules for Alterations. A copy of the Building Rules for Alterations in effect as of the date hereof have been provided to Tenant. In the event of any conflict between the provisions of this Lease and the provisions of any Building Rule for Alterations, the provisions of the Building Rules for Alterations shall govern;

Q. All materials and equipment to be installed, incorporated or located in the Demised Premises as a result of all Alterations shall be new and first quality;

R. No materials or equipment shall be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement of any kind;

S. Tenant, before commencement of each Alteration (other than (x) Tenant’s Initial Installation and (b) Alterations, the estimated cost of same constituting a single project shall not exceed $500,000.00 for the project), shall furnish to Owner a performance bond or other security reasonably satisfactory to Owner, in an amount at least equal to the estimated cost of such Alteration, guaranteeing the performance and payment thereof;

T. No Alteration shall be commenced unless any preceding Alteration shall have been fully paid for and proof of such payment furnished to Owner; provided, however, that this Section 3.01T shall not apply to (i) phased work constituting parts of a single Alteration by Tenant, or (ii) amounts concerning which a bona fide dispute with the contractor or vendor is then pending and which Tenant is diligently attempting to resolve;

U. Promptly following the completion of each Alteration, Tenant, at Tenant’s expense, shall obtain certificates of final approval of such Alteration required by any Governmental Authority and shall furnish Owner with copies thereof;

V. Tenant agrees that Tenant will not install, affix, add or paint in or on, nor permit, any work of visual art (as defined in the Federal Visual Artists’ Rights Act of 1990 or any successor law of similar import) or other Alteration to be installed in or on, or affixed, added to, or painted on, the interior or exterior of the Demised Premises, or any part thereof, including, but not limited to, the walls, floors, ceilings, doors, windows, fixtures and on land included as part of the Demised Premises, which work of visual art or other Alteration would, under the provisions of the Federal Visual Artists’ Rights Act of 1990, or any successor law of similar import, require the consent of the author or artist of such work or Alteration before the same could be removed, modified, destroyed or demolished;

W. Tenant, prior to Tenant’s performance of any Alteration, shall have the right to request, by notice to Owner (the “Specialty Alteration Notice”), that Owner designate whether any Alterations set forth on plans and specifications referenced by Tenant shall or shall not be a Specialty Alteration (as defined in Article 21). In the event that Tenant shall deliver a Specialty Alteration Notice to Owner at the same time that Tenant submits Tenant’s plans and specifications, then Owner shall respond at the same time that Owner
shall comment upon Tenant’s plans. If Tenant shall request such designation when requesting consent to an Alteration for which plans and specifications are not required pursuant to Section 3.01, Owner shall respond when Owner grants or withholds consent to such Alteration. If Tenant makes such inquiry subsequent to Owner’s commenting upon Tenant’s plans and specifications, Owner shall respond reasonably promptly under the circumstances. If Tenant makes such request and Owner does not designate such Alteration as a Specialty Alteration, then Owner shall not have the right to require Tenant to remove such Alteration upon the expiration or earlier termination of the Demised Term or at any time thereafter or to pay for Owner to remove the same; and

Z. No Owner consent (as set forth above) and no submission or review of plans referred to in Subsection I above shall be required for performance by Tenant of any Decoration, provided that such work is performed in compliance with the requirements of this Article (except for Subsection I above). Tenant shall, however, within a reasonable period of time prior to the commencement of the performance of the Decoration, provide Owner with reasonably detailed information setting forth the nature of the Decoration to be done, the anticipated scheduling of the same, the parties performing such work and any other information with respect to the performance of such Decoration which may be reasonably requested by Owner.

Section 3.02. No Consent to Contractor/No Mechanics Lien: Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Owner, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialmen, for the performance of any labor or the furnishing of any material for any specific Alteration to, or repair of, the Demised Premises, the Building, or any part of either. Any mechanic’s or other lien filed against the Demised Premises or the Building or the Real Property for work claimed to have been done for, or materials claimed to have been furnished to, Tenant or any person claiming through or under Tenant or based upon any act or omission or alleged act or omission of Tenant or any such person shall be discharged by Tenant, at Tenant’s sole cost and expense, within thirty (30) days after receipt of notice of the filing of such lien.

Section 3.03. Labor Harmony: Tenant shall not, at any time prior to or during the Demised Term, directly or indirectly employ, or permit the employment of, any contractor, mechanic or laborer in the Demised Premises, whether in connection with any Alteration or otherwise, if such employment will interfere or cause any conflict with other contractors, mechanics, or laborers engaged in the construction, maintenance or operation of the Building by Owner, Tenant or others. In the event of any such interference or conflict, Tenant, upon demand of Owner, shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

Section 3.04. Compliance with Fire Safety: Without in any way limiting the generality of the provisions of Section 3.01, all Alterations shall be made and performed in full compliance with all standards and practices adopted by Owner for fire safety in the Building. No Alteration shall affect all or any part of any Class E Fire Alarm and Communication system installed in the Demised Premises, except that in connection with any such Alteration Tenant may relocate certain components of such system, provided (i) such relocation shall be performed in a manner first reasonably approved by Owner, (ii) the new location of any such component shall be first reasonably approved by Owner, (iii) prior to any such relocation Tenant shall submit to Owner detailed plans and specifications therefor which shall be first reasonably approved by Owner and (iv) Owner shall have the election of relocating such components either by itself or by its contractors, in which event all reasonable out-of-pocket expenses incurred by Owner shall be reimbursed by Tenant upon demand of Owner, as additional rent.

Section 3.05. Sprinklers: A. In the event that Tenant performs any Alterations in the Demised Premises, Tenant, as part of such Alterations, shall be required to (x) install a sprinkler distribution system in the Demised Premises to the extent not theretofore installed, which system shall connect to the Building’s Sprinkler Standpipe (as defined herein), and (y) make all modifications to any existing sprinkler distribution system serving the Demised Premises up to the point of connection to the Building’s Sprinkler Standpipe, which modifications are necessary in connection with such Alterations, and in connection with the foregoing the following provisions of this Section shall apply: (i) such sprinkler distribution system and/or modifications thereto shall comply with all applicable laws, orders, rules and regulations; (ii) the supplying and installing of any such sprinkler distribution system and/or modifications thereto shall be made in accordance with the provisions of this Lease, including but not limited to the provisions of this Article and Article 6 and the type, brand, location and manner of installation of such sprinkler distribution system and/or modifications thereto shall be subject to Owner’s prior approval; and (iii) Tenant shall make all repairs and replacements, as and when necessary, to such sprinkler distribution system including any modifications thereto and any replacements thereof. Notwithstanding the aforesaid provisions of this Section, Owner shall have the election of supplying and installing such sprinkler distribution system and/or modifications thereto either by itself or by its agents or contractors, in which event all reasonable, out-of-pocket costs and expenses incurred by Owner in connection with supplying and installing such sprinkler distribution system and/or modifications thereto and any repairs or replacements of such sprinkler distribution system as the same may be modified and any replacements thereof made by Owner, at Owner’s election, shall be paid by Tenant to Owner within thirty (30) days next following the rendition of a statement thereof by Owner to Tenant. Notwithstanding anything contained in this Lease to the contrary, such sprinkler system, or any replacement thereof and any modifications and/or installations in connection therewith, whether made by Tenant or Owner, shall upon expiration or sooner termination of the Demised Term be deemed the property of Owner. The term “Building’s Sprinkler Standpipe” shall mean the Building’s combination standpipe vertical sprinkler supply riser and control assembly and all such other sprinkler infrastructure to such vertical system required to comply with Legal Requirements, including but not limited to, fire pumps, valve connections, hose racks, inclusive of the floor control valve and both a flow switch and a tamper switch with the inspector’s test connection on the floor of the Demised Premises and other fire suppression components necessary for a complete operable sprinkler system to which the sprinkler distribution piping serving the Demised Premises will connect.

B. Owner and Tenant agree that during the Demised Term, Owner shall perform maintenance on and shall repair and replace, if necessary, the Building’s Sprinkler Standpipe to which any sprinkler distribution system installed to serve the Demised Premises shall connect, in order to keep such Building’s Sprinkler Standpipe in good working order and in compliance with Legal Requirements, unless the necessity
Section 3.06. Asbestos or Other Asbestos Containing Materials: A. In the event that, at any time during the Demised Term, in connection with any Alterations proposed to be performed by Tenant in the Demised Premises Tenant is unable to obtain a New York City Department of Environmental Protection Form ACP5 dated 2/01 (or any successor form), signed by a certified asbestos investigator, or any other form or approval required by Federal, State, County or Municipal authorities, indicating that said Alterations do not constitute asbestos project, Owner agrees, upon notice from Tenant to such effect, to perform such work as shall be required to enable Tenant to obtain any such form or approval.

B. If any Legal Requirements require that any asbestos or other asbestos containing material contained in or about the Demised Premises be removed or dealt with in any particular manner, then it shall be Owner’s obligation, at Owner’s expense, to remove or so deal with such asbestos or other asbestos containing material in accordance with such Legal Requirements.

C. Notwithstanding the provisions of Subsections A and B of this Section, in the event any work performed by Owner pursuant to the provisions of either or both of such Subsections is in any way disturbed or damaged by Tenant or any person claiming through or under Tenant, or asbestos or other asbestos containing material is installed in the Demised Premises by or on behalf of Tenant, or any person claiming through or under Tenant, such asbestos or other asbestos containing material will be removed or dealt with in such manner as may be required to enable Tenant to comply with any such Legal Requirements referred to in Subsection B. Any work required to be performed by Tenant pursuant to the provisions of the foregoing sentence is referred to as the “Compliance Work”. In the event Tenant is required to perform any Compliance Work then, notwithstanding anything to the contrary contained in this Subsection C, Owner, at Owner’s election, shall have the option to itself perform any Compliance Work and, in such event, Tenant shall pay to Owner all of Owner’s costs in connection therewith within ten (10) days following the rendition of a statement thereof by Owner to Tenant.

D. Since current Legal Requirements state that no New York City Department of Environmental Protection Form ACP-5 dated 2/01 (or any successor form) may be issued without plans and specifications for the Alterations in question, wherever in this Lease Owner has agreed to supply Tenant with a New York City Department of Environmental Protection form ACP-5 dated 2/01 (or any successor form), Owner’s obligation to supply such form shall be conditioned on the requirement that Tenant has delivered to Owner such plans and specifications for the Alterations in question to enable Owner to obtain such form.

E. Owner shall also deliver to Tenant an ACP-5 with respect to Tenant’s Initial Installation (as defined herein) reasonably promptly after Owner’s approval of Tenant’s plans therefor.

Section 3.07. Dispute Resolution: Any dispute with respect to the reasonableness of any failure or refusal of Owner to grant its consent or approval to any request for such consent or approval pursuant to the provisions of Section 3.01 with respect to which request Owner has agreed, in such Section not unreasonably to withhold such consent or approval, shall be determined by arbitration in accordance with the provisions of Article 36.

Section 3.08. Tenant’s Initial Installation/ Owner’s Work Contribution: A. Promptly after the Commencement Date, Tenant shall, at Tenant’s cost and expense, perform various Alterations in the Demised Premises required for Tenant’s occupancy and use of the Demised Premises and conduct of its business therein. Such Alterations (referred to as “Tenant’s Initial Installation”) shall be made and performed in accordance with the provisions of this Lease, including, without limitation, the provisions of Articles 3 and 6 hereof. Tenant shall procure Tenant’s Initial Installation to completion with all reasonable diligence. Upon completion of Tenant’s Initial Installation, the Demised Premises shall be fully sprinklered and in compliance with all Legal Requirements, except that Tenant shall, as part of Owner’s Initial Work and as more particularly described in Section 12.02, provide a unisex restroom that complies with the New York City Local Law #58 of 1987 and the Americans With Disabilities Act and any successor laws of like import (collectively, the “ADA”).

B. Subject to the provisions and requirements of this Section 3.08, and provided that Tenant is not then in default (x) under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed other than the payment of Fixed Rent and increases thereto under Article 23 of the Lease, beyond the applicable notice and grace period set forth in the Lease or (y) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Owner shall contribute the sum of not more than ONE MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED TWENTY-FIVE and 00/100 DOLLARS ($1,814,625.00) in the aggregate toward the cost and expense actually incurred by Tenant with respect to Tenant’s Initial Installation. Owner’s contribution on account of Tenant’s Initial Installation is referred to as “Owner’s Work Contribution”. Irrespective of the actual cost and expense of Tenant’s Initial Installation, in no event shall Owner’s Work Contribution exceed the aggregate sum of ONE MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED TWENTY-FIVE and 00/100 DOLLARS ($1,814,625.00). In no event shall a sum greater
than the aggregate amount of TWO HUNDRED SEVENTY-TWO THOUSAND ONE HUNDRED NINETY-FOUR and 00/100 DOLLARS ($272,194.00) of Owner’s Work Contribution be applicable to Soft Costs (as defined herein). For purposes of this Section 3.08, “Soft Costs” shall mean those so-called “soft” costs and expenses incurred by Tenant in connection with Tenant’s Initial Installation for consultant, architectural, engineering, designer, permit and filing costs and fees (as opposed to so-called “hard costs” of Alterations that shall become permanently affixed to the Demised Premises).

(2) Subject to the provisions of the following Paragraph (3) of this Subsection B, and provided that Tenant is not then in default (x) under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed other than the payment of Fixed Rent and increases thereto due under Article 23 of the Lease, beyond the applicable notice and grace period set forth in the Lease or (y) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Owner shall distribute Owner’s Work Contribution on account of Tenant’s Initial Installation as the work with respect thereto progresses, upon Tenant’s submission to Owner of (i) paid receipts and copies of checks or other evidence of payment, in form reasonably acceptable to Owner, for the cost and expense of Tenant’s Initial Installation (with it understood that Tenant shall deliver copies of cancelled checks to Owner when received by Tenant), and (ii) partial waivers of mechanic’s liens from all contractors, subcontractors, materialmen and laborers who performed any services or delivered any materials in connection with Tenant’s Initial Installation and which services or materials are the subject of the distribution in question by Owner to Owner of Work Contribution, provided however, that at no time shall Owner be required to pay more than the value of the work in place and Soft Costs, subject to the provisions of Subsection B(1) of this Section 3.08, and provided further that any such work shall comply with any plans and specifications previously approved by Owner and shall otherwise comply with the requirements of this Lease and Tenant’s request for distribution shall be accompanied by a certification of Tenant’s architect or designer to that effect. If requested, Tenant shall also deliver to Owner a certification from an officer of Tenant stating that all such receipts submitted to Owner have, in fact, been paid by Tenant. Distributions of Owner’s Work Contribution shall be made not more than monthly. Each such Tenant’s request for the disbursement of Owner’s Work Contribution shall also include written information in reasonable detail provided on AIA Form G702 Application for Payment with Continuation Sheet AIA Form 703 attached, so that Owner can readily determine the type, class and respective amounts of the expenditures made with such sums requested (i.e.: the type of “hard costs” or “soft costs” etc.), and Tenant shall reasonably cooperate with Owner to provide Owner with further information in the event that Owner has any inquiries with respect to the same. In the event that the Tenant shall not be entitled to receive a disbursement of Owner’s Work Contribution by reason of a default by Tenant under the terms and conditions of this Lease on Tenant’s part to be observed and performed as set forth in the first sentence of this Subsection B(2) of this Section 3.08 (such a disbursement being referred to herein as a “Refused Disbursement”), and in the further event that Tenant shall subsequently cure such default (without any obligation of Owner to accept such cure after the expiration of the applicable notice and grace periods set forth in Article 16 of this Lease unless (i) Tenant gives to Owner a notice to the effect that Tenant has cured such default and is therefore requesting that Owner remit to Tenant the Refused Disbursement, and (ii) Owner does not commence the exercise of any of its remedies under this Lease within forty-five (45) days of the giving of such notice by Tenant to Owner), then, following the acceptance, if any, by Owner of such cure by Tenant, Tenant shall be entitled to receive such Refused Disbursement in accordance with, and subject to, the terms and provisions of this Subsection B of this Section 3.08.

(3) Notwithstanding the aforesaid, Owner shall not be required to disburse the last ten percent (10%) of Owner’s Work Contribution until the occurrence of all of the following: (i) completion of Tenant’s Initial Installation in accordance with the plans and specifications approved by Owner and otherwise in accordance with the provisions of this Lease and a certification by Tenant’s architect or designer to that effect (which certification may be provided on AIA Form G704 Certificate of Substantial Completion), (ii) proof in form reasonably satisfactory to Owner of complete payment by Tenant of the cost and expense of such Tenant’s Initial Installation (including copies of all cancelled checks not previously delivered to Owner and receipt of final waivers of mechanics liens from all contractors, subcontractors, materialmen and laborers who performed any services or delivered any materials in connection with such Tenant’s Initial Installation), and (iii) proof that all consents, approvals or signoffs (other than the fire alarm) to be obtained by Tenant under any Legal Requirements or as required by any Governmental Authority have been obtained; upon compliance of the aforesaid, then, provided that Tenant is not then in default (x) under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed other than the payment of Fixed Rent and increases thereto due under Article 23 of the Lease, beyond the applicable notice and grace period set forth in the Lease or (y) of the covenants to pay the Fixed Rent and increases thereto under Article 23, the balance of Owner’s Work Contribution (less $50,000.00 of Owner’s Work Contribution, which shall be distributed to Tenant at such time as Tenant shall submit fire alarm signoffs) shall thereafter be distributed to Tenant in accordance with the provisions of this Section 3.08. In the event that Tenant shall not be entitled to receive the distribution described in the immediately preceding sentence (the “Final Disbursement”) by reason of a default by Tenant under the terms and conditions of this Lease on Tenant’s part to be observed and performed as set forth in such immediately preceding sentence, and in the further event that Tenant shall subsequently cure such default (without any obligation of Owner to accept such cure after the expiration of such applicable notice and grace periods hereunder unless (i) Tenant gives to Owner a notice to the effect that Tenant has cured such default and is therefore requesting that Owner remit to Tenant the Refused Disbursement, and (ii) Owner does not commence the exercise of any of its remedies under this Lease within forty-five (45) days of the giving of such notice by Tenant to Owner), then, following the acceptance, if any, by Owner of such cure by Tenant, Tenant shall be entitled to receive the Final Disbursement in accordance with, and subject to, the terms and provisions of this Subsection B of this Section 3.08.

C. The making of the Owner’s Work Contribution by Owner shall constitute a single nonrecurring obligation on the part of Owner. In the event this Lease is renewed or extended for a further term by agreement or operation of law, Owner’s obligation to give Owner’s Work Contribution or any part thereof shall not apply to any such renewal or extension.

D. Tenant acknowledges and agrees that Owner is merely acting on behalf of Tenant in connection with the disbursement of the Owner’s Work Contribution in accordance
with the provisions of this Section 3.08 to Tenant for the contractors, suppliers and materialmen employed in connection with Tenant’s Initial Installation, and that Owner shall have no obligation, liability or responsibility to any of the contractors, suppliers or materialmen seeking any of the Owner’s Work Contribution pursuant to any of the aforesaid contracts or agreements with such contractors, suppliers or materialmen or otherwise, provided that Owner shall be obligated to disburse such Owner’s Work Contribution only as expressly provided by the provisions of this Section 3.08. Nothing contained in this Section 3.08 shall relieve Tenant of any obligations or liabilities to such contractors, suppliers or materialmen under such contracts, agreements or otherwise. Nothing contained in this Section 3.08 shall relieve any obligations of Tenant under Sections 3.02 or 3.03 of this Lease. Tenant shall indemnify Owner and Owner’s Indemnitees from all loss, cost, liability and expense, including but not limited to reasonable counsel fees, incurred in connection with, or arising from, any claims or actions by any contractors, suppliers or materialmen employed in connection with Tenant’s Initial Installation, except to the extent that the same arises as a result of the failure by Owner to disburse all or any portion of Owner’s Work Contribution in accordance with the terms of this Section 3.08.

Section 3.09. Permits and Approvals: A. Owner, at no cost or expense or liability to Owner, agrees to reasonably cooperate with Tenant and, at Tenant’s sole cost and expense, join in any application by Tenant to the extent Owner is required to be a party thereto for any licenses, approvals and authorizations for the performance of any approved Alterations in and to the Demised Premises using the New York City Department of Buildings regular filing policies, provided (a) Owner is reasonably satisfied as to the contents of any such application and (b) Tenant shall indemnify Owner against any loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees, arising out of, or from, the execution by Owner of any such application.

B. Tenant shall be permitted to “self-certify” with respect to its architectural drawings only for Tenant’s Initial Installation and Owner, at no expense to Owner, agrees to reasonably cooperate with Tenant and its architect and, at Tenant’s expense, join in a priority filing application under the so-called “Professional Certification Program” with the New York City Department of Buildings solely with respect to such architectural plans, provided (i) Owner is reasonably satisfied as to the factual contents of any such application (ii) such Alterations shall be permitted by the provisions of this Lease and with it understood that self-certification may be used only for architectural plans (and not for plans or work that pertain to fire protection, life-safety, MEP and/or structural aspects, (iii) the plans for such work shall have been prepared by a licensed architect reasonably acceptable to Owner, with it understood TPG is so acceptable, and (iv) Tenant shall first execute Owner’s standard priority filing letter, the form of which is attached hereto as Exhibit 1 and made a part hereof. Tenant hereby agrees to indemnify Owner against any loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees, arising out of, or in connection with the execution by Owner of any such priority filing application or the self-certification on behalf of Tenant, including, without limitation, regarding any construction or design not in compliance with Legal Requirements.

C. Tenant’s obligations set forth in this Section 3.09 and in any priority filing letter signed by Tenant shall survive the expiration or sooner termination of this Lease.

Section 3.10. Reasonable Access to Other Space: If the performance of any Alterations by Tenant requires, in accordance with good construction practice, access to other space in the Building, Owner shall reasonably cooperate with Tenant in order that Tenant can gain reasonable access to such space, subject to security requirements of other tenants in the Building. In connection with such access to other space, Tenant shall use commercially reasonable efforts to avoid interfering with other occupants of the Building.

ARTICLE 4

OWNERSHIP OF IMPROVEMENTS

Section 4.01. General Rights of Owner and Tenant: A. All appurtenances, fixtures, improvements, additions and other property attached to or installed in the Demised Premises, whether by Owner or Tenant or others, and at Owner’s expense, or for which Owner has paid or made a contribution to defray the cost thereof, shall be and remain the property of Owner, and any replacements of any property of Owner shall be and remain the property of Owner, and shall remain upon and be surrendered with the Demised Premises as a part thereof at the end of the Demised Term, subject to any obligations of Tenant set forth in Article 21 hereof.

B. All appurtenances, fixtures, improvements, additions and other property attached to or installed by Tenant at Tenant’s sole expense upon or in the Demised Premises which are of a permanent nature and which cannot be removed without material damage to the Demised Premises or Building shall remain the property of Tenant during the term of this Lease (and Tenant shall be entitled to depreciate the cost and expense thereof) and at the end of the term of this Lease, shall become and thereafter remain the property of Owner and shall remain upon and be surrendered with the Demised Premises as a part thereof at the end of the term of this Lease, subject to any obligations of Tenant set forth in Article 21 hereof.

C. All fixtures, improvements, additions, furniture, furnishings and removable trade fixtures and equipment, installed at the sole expense of Tenant with respect to which Tenant has not been granted any credit or allowance by Owner, and which are removable without material damage to the Demised Premises shall be and remain the property of Tenant during the Demised Term and shall be removed at the end of the Demised Term as set forth in Article 21.

D. All appurtenances, fixtures, improvements, additions and other property attached to or installed in the Demised Premises, whether by Owner or Tenant or others, and whether at Owner’s expense, or Tenant’s expense, or the joint expense of Owner and Tenant, which are removable without material damage to the Demised Premises are referred to as “Tenant’s Personal Property”.

Reasonable Access to Other Space

If the performance of any Alterations by Tenant requires, in accordance with good construction practice, access to other space in the Building, Owner shall cooperate with Tenant in order that Tenant can gain reasonable access to such space, subject to security requirements of other tenants in the Building. In connection with such access to other space, Tenant shall use commercially reasonable efforts to avoid interfering with other occupants of the Building.

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B. Tenant shall be permitted to “self-certify” with respect to its architectural drawings only for Tenant’s Initial Installation and Owner, at no expense to Owner, agrees to reasonably cooperate with Tenant and its architect and, at Tenant’s expense, join in a priority filing application under the so-called “Professional Certification Program” with the New York City Department of Buildings solely with respect to such architectural plans, provided (i) Owner is reasonably satisfied as to the factual contents of any such application (ii) such Alterations shall be permitted by the provisions of this Lease and with it understood that self-certification may be used only for architectural plans (and not for plans or work that pertain to fire protection, life-safety, MEP and/or structural aspects, (iii) the plans for such work shall have been prepared by a licensed architect reasonably acceptable to Owner, with it understood TPG is so acceptable, and (iv) Tenant shall first execute Owner’s standard priority filing letter, the form of which is attached hereto as Exhibit 1 and made a part hereof. Tenant hereby agrees to indemnify Owner against any loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees, arising out of, or in connection with the execution by Owner of any such priority filing application or the self-certification on behalf of Tenant, including, without limitation, regarding any construction or design not in compliance with Legal Requirements.

C. Tenant’s obligations set forth in this Section 3.09 and in any priority filing letter signed by Tenant shall survive the expiration or sooner termination of this Lease.

Section 3.10. Reasonable Access to Other Space: If the performance of any Alterations by Tenant requires, in accordance with good construction practice, access to other space in the Building, Owner shall reasonably cooperate with Tenant in order that Tenant can gain reasonable access to such space, subject to security requirements of other tenants in the Building. In connection with such access to other space, Tenant shall use commercially reasonable efforts to avoid interfering with other occupants of the Building.

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B. All appurtenances, fixtures, improvements, additions and other property attached to or installed by Tenant at Tenant’s sole expense upon or in the Demised Premises which are of a permanent nature and which cannot be removed without material damage to the Demised Premises or Building shall remain the property of Tenant during the term of this Lease (and Tenant shall be entitled to depreciate the cost and expense thereof) and at the end of the term of this Lease, shall become and thereafter remain the property of Owner and shall remain upon and be surrendered with the Demised Premises as a part thereof at the end of the term of this Lease, subject to any obligations of Tenant set forth in Article 21 hereof.

C. All fixtures, improvements, additions, furniture, furnishings and removable trade fixtures and equipment, installed at the sole expense of Tenant with respect to which Tenant has not been granted any credit or allowance by Owner, and which are removable without material damage to the Demised Premises shall be and remain the property of Tenant during the Demised Term and shall be removed at the end of the Demised Term as set forth in Article 21.

D. All appurtenances, fixtures, improvements, additions and other property attached to or installed in the Demised Premises, whether by Owner or Tenant or others, and whether at Owner’s expense, or Tenant’s expense, or the joint expense of Owner and Tenant, which are removable without material damage to the Demised Premises are referred to as “Tenant’s Personal Property”.

Reasonable Access to Other Space

If the performance of any Alterations by Tenant requires, in accordance with good construction practice, access to other space in the Building, Owner shall cooperate with Tenant in order that Tenant can gain reasonable access to such space, subject to security requirements of other tenants in the Building. In connection with such access to other space, Tenant shall use commercially reasonable efforts to avoid interfering with other occupants of the Building.
ARTICLE 5

REPAIRS

Section 5.01. Tenant’s Repair Obligations: A. Tenant shall take good care of the Demised Premises (including, but not limited to, any Class E Fire Alarm and Communication system and any sprinkler system and any installations made or equipment installed therein as a result of any requirement of New York City Local Law #16 of 1984 or any successor law or like import, but in each case, only to the extent such systems exclusively serve the Demised Premises) and, at Tenant’s sole cost and expense, shall make all repairs and replacements, structural and otherwise, ordinary and extraordinary, foreseen and unforeseen as and when needed to preserve the Demised Premises (including, but not limited to, any Class E Fire Alarm and Communication system and any sprinkler system and any installations made or equipment installed therein as a result of any requirement of New York City Local Law #16 of 1984 or any successor law or like import, but in each case, only to the extent such systems exclusively serve the Demised Premises) in good and safe working order and in first class repair and condition, except that Tenant shall not be required to make any structural repairs or structural replacements to the Demised Premises unless necessitated or occasioned by the acts, omissions or negligence of Tenant or any person claiming through or under Tenant or any of their servants, employees, contractors, agents, visitors or licensees, or by the particular manner of use or occupancy of the Demised Premises by Tenant or any such person (in contradistinction to the mere use or occupancy of the Demised Premises for office use). For the purposes of this Article, the installation, maintenance, repair and replacement of a sprinkler system or part thereof or any work pertaining to such sprinkler system or, subject to the terms of Section 3.06, any repairs or work involving asbestos or any other hazardous materials or involving compliance with Local Laws #5 of 1973, #16 of 1984, #58 of 1987 and the Americans With Disabilities Act and any successor laws of like import shall be deemed to be non-structural repairs or replacements. Without affecting Tenant’s obligations set forth in the preceding sentence, Tenant, at Tenant’s sole cost and expense, shall also (i) make all repairs and replacements, and perform all maintenance as and when necessary, to the lamps, tubes, ballasts, and starters in the lighting fixtures installed in the Demised Premises, (ii) make all repairs and replacements, as and when reasonably necessary, to Tenant’s Personal Property and to any Alterations made or performed by or on behalf of Tenant or any person claiming through or under Tenant, and (iii) if the Demised Premises shall include any space on any ground, street, mezzanine or basement floor in the Building, make all replacements, as and when necessary, to all windows and plate and other glass in, on or about such space, and obtain and maintain, throughout the Demised Term, plate glass insurance policies issued by companies, and in form and amounts, satisfactory to Owner, in which Owner, its agents and any lessor under any ground or underlying lease shall be named as parties insured, and (iv) perform all maintenance and make all repairs and replacements, as and when necessary, to any air conditioning equipment, private elevators, escalators, conveyors or mechanical systems (other than, in each case, the Building’s standard equipment and systems) which may be installed in the Demised Premises by Owner, Tenant or others. However, the provisions of the foregoing sentence shall not be deemed to give to Tenant any right to install air conditioning equipment, elevators, escalators, conveyors or mechanical systems. All repairs and replacements made by or on behalf of Tenant or any person claiming through or under Tenant shall be made and performed in conformity with, and subject to the provisions of Article 3 and shall be at least equal in quality and class to the original work or installation. The necessity for, and adequacy of, repairs and replacements pursuant to this Article 5 shall be measured by the standard which is appropriate for first class office buildings of similar construction and class in the Borough of Manhattan, City of New York.

B. Tenant’s obligations under Subsection A of this Section 5.01 shall not include obligations to repair or maintain the Building plumbing equipment, Building mechanical equipment, Building electrical equipment, Building HVAC equipment or Building life safety equipment, provided, however, if any such repair or maintenance work is necessitated or occasioned by the acts, omissions or negligence of Tenant or any person claiming through or under Tenant or any of their servants, employees, contractors, agents, visitors or licensees, or by the particular manner of use or occupancy of the Demised Premises by Tenant or any such person, as opposed to the mere use of the Demised Premises for general office use, then Tenant shall reimburse Owner for the reasonable out of pocket costs and expenses thereof, subject to the provisions of Section 9.02 and the so-called “waiver of subrogation” provisions referred to therein.

Section 5.02. Owner’s Repair Obligations: Supplementing the provisions of Section 5.01, Owner, at Owner’s cost and expense, shall make (i) all structural repairs to the Demised Premises as and when required, (ii) all repairs necessary to furnish the elevator, plumbing, electrical, heating, ventilation and air conditioning services required to be furnished by Owner to Tenant under the provisions of Article 29, (iii) repairs and perform routine maintenance, if necessary, to the Building’s Sprinkler Standpipe, and (iv) all necessary repairs to the public portions of the Building which materially affect Tenant’s use and enjoyment of the Demised Premises, except that Owner shall not be required to make any of the repairs referred to in subdivision (i), (ii), or (iv) of this sentence if Tenant is obligated to make such repairs pursuant to the provisions of Section 5.01. Notwithstanding the foregoing provisions of this Section, (x) Owner shall have no obligation to make any repairs within the Demised Premises until specific notice of the necessity thereof shall have been given by Tenant to Owner, and (y) with respect to repairs other than repairs within the Demised Premises, Owner shall have no obligation to make any such repairs unless and until Owner has actual knowledge of the necessity therefor hereunder. Owner’s obligations under this Section 5.02 shall be subject to the provisions of Article 9 and the so-called “waiver of subrogation” provisions referred to therein.

ARTICLE 6

COMPLIANCE WITH LAWS

Section 6.01. General Tenant Covenants: Tenant, at Tenant’s sole cost and expense, shall comply with all Legal Requirements which shall impose any duty upon Owner or Tenant with respect to the Demised Premises or the use or occupation thereof, including, but not limited to, the installation of, modification to and/or
maintenance of a sprinkler distribution system (up to the point of connection to the Building’s Sprinkler Standpipe) to serve the Demised Premises or any part thereof, or subject to Section 3.06, any requirement that any hazardous material that were introduced by Tenant or anyone claiming by through or under Tenant be removed or dealt with in any particular manner, except that Tenant shall not be required to make any structural Alterations in order so to comply unless such Alterations shall be necessitated or occasioned, in whole or in part, by the acts, omissions, or negligence of Tenant or any person claiming through or under Tenant, or of any of their servants, employees, contractors, agents, visitors or licensees, or by the particular manner of use or occupancy of the Demised Premises by Tenant or by any such person (in contradistinction to the mere use or occupancy of the Demised Premises for office use). For all purposes of this Lease the term “Legal Requirements” shall mean all present and future laws, codes, ordinances, statutes, regulations, ordinary and extraordinary, foreseen and unforeseen (including, but not limited to, the New York State Energy Conservation Construction Code, New York City Local Laws #5 of 1973, #16 of 1984 and #58 of 1987 and the Americans with Disabilities Act, and any successor laws of like import) of any Governmental Authority (hereinafter defined) and all directions, requirements, orders and notices of violations thereof. For all purposes of this Lease, the term “Governmental Authority” shall mean the United States of America, the State of New York, the County of New York, the Borough of Manhattan, the City of New York, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over Owner, Tenant, this Lease or the Real Property or any portion thereof. Any work or installations made or performed by or on behalf of Tenant or any person claiming through or under Tenant pursuant to the provisions of this Article shall be made in conformity with and subject to the provisions of Article 3. For the purposes of this Article, the installation and maintenance of a sprinkler distribution system or part thereof or any work pertaining to such sprinkler distribution system or any requirement that any asbestos or other hazardous material be removed or dealt with in any particular manner or any Alterations required to comply with Local Law #5 of 1973, #16 of 1984, #58 of 1987 and the Americans With Disabilities Act and any successor laws of like import shall be deemed to be a non-structural Alteration. Any work with respect to a sprinkler system shall be made in conformity with and subject to Owner’s obligations under the provisions of Section 3.05. Compliance with any requirement regarding any asbestos or asbestos containing material shall be made in conformity with and subject to Owner’s obligations under the provisions of Section 3.06.

Section 6.02. Tenant’s Compliance with Owner’s Fire Insurance: Tenant shall not do anything, or permit anything to be done, in or about the Demised Premises which shall (i) invalidate or be in conflict with the provisions of any fire and/or other insurance policies covering the Building or any property located therein, or (ii) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Owner, or (iii) subject Owner to any liability or responsibility for injury to any person or property by reason of any business operation being conducted in the Demised Premises, or (iv) cause any increase in the fire insurance rates applicable to the Building or property located therein at the beginning of the Demised Term or at any time thereafter. Tenant, at Tenant’s expense, shall comply with all present and future rules, orders, regulations and/or requirements of the New York Board of Fire Underwriters and the New York Fire Insurance Rating Organization or any similar body and the issuer of any insurance obtained by Owner covering the Building and/or the Real Property, whether ordinary or extraordinary, foreseen or unforeseen, including, but not limited to, the installation and maintenance of, or any other work pertaining to, any sprinkler system to serve the Demised Premises or any part thereof (subject to the terms of Section 3.05), any requirement that any asbestos be removed or dealt with in any particular manner (subject to the terms of Section 3.06) or that any hazardous material brought into the Building by Tenant be removed or dealt with in any particular manner and any requirement of New York City Local Law #5 of 1973, #16 of 1984, #58 of 1987 and the Americans With Disabilities Act or any successor laws of like import. The foregoing, notwithstanding, Tenant shall not be required to make any structural Alterations in order so to comply with the provisions of this Section 6.02 if Tenant would not be required to do so under Section 6.01 in the event that the requirements referred to under this Section 6.02 were Legal Requirements.

Section 6.03. Fire Insurance Rates: In any action or proceeding wherein Owner and Tenant are parties, a schedule or “make up” of rates applicable to the Building or property located therein issued by the New York Fire Insurance Rating Organization, or other similar body fixing such fire insurance rates, shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to the Building or property located therein.

Section 6.04. Owner’s Compliance with Legal Requirements: Owner agrees solely to the extent that non-compliance by Owner materially adversely affects Tenant’s ability to use the Demised Premises for its normal business operations, Owner shall comply with all Legal Requirements and with all rules, orders, regulations and requirements of the New York Board of Fire Underwriters and the New York Fire Insurance Rating Organization or any similar body and the issuer of any insurance obtained by Owner covering the Building and/or the Real Property, which shall impose any duty upon Owner or Tenant with respect to the Demised Premises or the use or occupation thereof, or any public portion of the Building which affects Tenant’s use of the Demised Premises, all of which are of Building-wide application and with which Tenant is not required to comply pursuant to the provisions of Section 6.01 or 6.02; provided, however, Owner shall not be required to so comply unless and until Owner shall have received notice of the necessity therefor from Tenant. All work required under this Section 6.04 shall be done in such manner as to minimize interference with Tenant’s normal business operations; provided, however, nothing contained in this sentence shall be deemed to impose upon Owner any obligation to employ contractors or labor at so-called overtime or other premium pay rates. Owner shall have the right to contest, by appropriate legal proceedings diligently conducted in good faith, at its own cost and expense, the validity or application of any Legal Requirement with which Owner is required to comply under the provisions of this Section 6.04, provided that such contest shall not subject Tenant to any criminal penalty or place Tenant in imminent danger of being required to vacate the Demised Premises.

Section 6.05. Tenant’s Right to Contest Legal Requirements: Tenant shall have the right after prior written notice to Owner, the lessors under all ground or underlying leases of which Tenant has been provided written notice, and the holder of any mortgage which may now or hereafter affect such leases and/or the Real Property or the Building of which Tenant has been provided written notice, to contest, by appropriate legal proceedings, diligently conducted in good faith, at its own cost and expense, the validity or application of any Legal Requirements with which
Tenant is required to comply under the provisions of this Article, provided that:

(1) Such contest shall not subject Owner or any lessor under any ground or underlying lease or the holder of any mortgage to any criminal penalty or impose upon Owner any unusual obligation or liability or affect any service required to be furnished by Owner to any other tenant or occupant of the Building; and

(2) Neither such contest nor Tenant’s failure to comply pending such contest shall constitute a default under any ground or underlying lease or under any mortgage affecting any ground or underlying lease, or the Building or the Real Property; and

(3) Tenant shall obtain and maintain, during the pendency of any such contest, a bond (or other security satisfactory to Owner) in form and amount and issued by a surety company satisfactory to Owner and the lessors under all ground or underlying leases, and the holders of all mortgages affecting the Real Property indemnifying and protecting Owner and such lessors under all ground or underlying leases and such holders of all mortgages affecting the Real Property from and against any and all damage, expense, losses, injuries, fees, including, but not limited to, reasonable counsel fees, penalties, actions, cause of action, suits, costs, claims or judgments arising from such contest or Tenant’s non-compliance with any such Legal Requirements; and

(4) Tenant shall indemnify and protect Owner, all of the lessors under any ground or underlying lease and all of the holders under any such mortgages affecting such ground or underlying leases, Building or the Real Property from and against any and all damage, expenses, losses, injuries, fees, including, but not limited to, reasonable counsel fees, penalties, actions, causes of action, suits, costs, claims or judgments arising from such contest or Tenant’s non-compliance with any such Legal Requirements; and

(5) Promptly following the determination of any such contest, Tenant shall comply with Legal Requirements except to the extent, if any, to which it has been determined in said legal proceedings that Tenant is excused from such compliance.

ARTICLE 7

SUBORDINATION, ATTORNMENT, ETC.

Section 7.01. Lease Subordination: This Lease and all rights of Tenant under this Lease are, and shall remain, unconditionally subject and subordinate in all respects to (a) all ground and underlying leases now or hereafter in effect affecting the Real Property or any portion thereof, including, but not limited to the lease dated as of March 13, 1985 between The Shubert Organization, Inc. as landlord, and Owner, as tenant (referred to as the “Ground and Development Rights Lease”), and (b) all mortgages which may now or hereafter affect such leases or the Real Property, and to all advances made or hereafter to be made under such mortgages, and (c) all renewals, modifications, consolidations, correlations, replacements and extensions of, increases to and substitutions for, such leases and mortgages (such leases as above described are referred to herein collectively as the “Superior Lease” and such mortgages as above described are referred to herein collectively as the “Mortgage”). The foregoing provisions of this Section shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall execute and deliver promptly any reasonable and factually accurate certificate or other instrument which Owner, or any lessor under any Superior Lease, or any holder of any Mortgage may reasonably request. If, in connection with obtaining financing with respect to the Building, the Real Property, or the interest of the lessee under any Superior Lease, any recognized lending institution shall request reasonable modifications of this Lease as a condition of such financing, Tenant covenants not unreasonably to withhold or delay its agreement to such modifications, provided that such modifications do not materially increase the obligations, or materially and adversely affect the rights, of Tenant under this Lease. No act or failure to act on the part of Owner which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant’s obligations hereunder or to terminate this Lease shall result in a release or termination of such obligations or a termination of this Lease unless (i) Tenant shall have first given written notice of Owner’s act or failure to act to the holder or holders of any Mortgage and/or the lessor under any Superior Lease of whom Tenant has been given written notice, specifying the act or failure to act on the part of Owner which could or would give basis to Tenant’s rights; and (ii) the holder or holders of such Mortgage and/or the lessors under any Superior Lease, after receipt of such notice, have failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this sentence shall be deemed to impose any obligation on any such holder or lessor to correct or cure any such condition. Except as otherwise provided in any Non-Disturbance Agreement (as defined herein), a “reasonable time” for purposes of the immediately preceding sentence means and includes a reasonable time to obtain possession of the Building if any such holder or lessor elects to do so (provided such holder or lessor institutes proceedings to obtain possession within a reasonable time after notice from Tenant pursuant to the foregoing provisions and conducts such proceedings with reasonable diligence) and a reasonable time after so obtaining possession to correct or cure the condition if such condition is determined to exist (provided such holder or lessor commences said cure within ten (10) days after obtaining possession and prosecutes the work required to cure with reasonable diligence).

Section 7.02. Tenant Attornment: If, at any time prior to the expiration of the Demised Term, any Superior Lease under which Owner then shall be the lessee shall terminate or be terminated for any reason, or the holder of any Mortgage comes into possession of the Real Property or the Building or the estate created by any Superior Lease by a receiver or otherwise, Tenant agrees, at the election and upon demand of any owner of the Real Property, or of the holder of any Mortgage so in possession, or of any lessor under any Superior Lease covering the premises which include the Demised Premises, to attorn, from time to time, to any such owner, holder, or lessor, upon the then executory terms and conditions of this Lease, for the remainder of the term originally demised in this Lease, provided that such owner, holder or lessor, as the case may be, shall then be entitled to possession of the Demised Premises. The provisions of this Section shall inure to the benefit of any such owner, holder, or lessor, shall apply notwithstanding that, as a matter
of law, this Lease may terminate upon the termination of any Superior Lease, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions. Tenant, however, upon demand of any such owner, holder, or lessor, agrees to execute, from time to time, reasonable and factually accurate instruments in confirmation of the foregoing provisions of this Section, satisfactory to any such owner, holder, or lessor, acknowledging such attornment and setting forth the terms and conditions of its tenancy. Nothing contained in this Section shall be construed to impair any right otherwise exercisable by any such owner, holder, or lessor. Notwithstanding anything to the contrary set forth in this Article no such owner, holder or lessor shall be bound by (i) any payment of any installment of Fixed Rent or increases therein or any additional rent which may have been made more than thirty (30) days before the due date of such installment, or (ii) any amendment or modification to this Lease which is made without its consent, except for any amendment or modification for which such holder’s or lessor’s consent is not required under the applicable Mortgage or Superior Lease.

Section 7.03. Estoppel Certificates: A. From time to time, within ten (10) business days next following Owner’s request, Tenant shall deliver to Owner a written statement executed and acknowledged by Tenant, in form reasonably satisfactory to Owner and Tenant, (i) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth the specific nature of all modifications), and (ii) setting forth the date to which the Fixed Rent has been paid, and (iii) stating whether or not, to the best knowledge of Tenant, Owner is in default under this Lease, and, if Owner is in default, setting forth the specific nature of all such defaults and (iv) stating that Tenant has accepted and occupied the Demised Premises and all improvements required to be made by Owner pursuant to the provisions of this Lease, have been made, if such be the case. Tenant acknowledges that any statement delivered pursuant to this Section may be relied upon by any purchaser or owner of the Building, or of the Real Property, or any part thereof, or of Owner’s interest in the Building or the Real Property or any Superior Lease, or by the holder of any Mortgage, or by any assignee of the holder of any Mortgage, or by any lessor under any Superior Lease.

B. From time to time, within ten (10) business days next following Tenant’s request, Owner shall deliver to Tenant a written statement executed and acknowledged by Owner, in form reasonably satisfactory to Owner and Tenant, (i) acknowledging whether or not this Lease is then in full force and effect and whether or not the same has been modified (and if modified, setting forth the specific nature of all modifications), and (ii) setting forth the date to which the Fixed Rent has been paid, and (iii) stating whether or not, to the knowledge of Owner, Tenant is in default under this Lease, and, if Tenant is in default, setting forth the specific nature of all such defaults.

Section 7.04. Owner Assignment of Lease and Rents: If Owner assigns its interest in this Lease, or the rents payable hereunder, to the holder of any Mortgage or the lessor under any Superior Lease, whether the assignment shall be conditional in nature or otherwise, Tenant agrees that (a) the execution thereof by Owner and the acceptance by such holder or lessor shall not be deemed an assumption by such holder or lessor of any of the obligations of the Owner under this Lease unless such holder or lessor shall, by written notice sent to Tenant, specifically otherwise elect; and (b) except as aforesaid, such holder or lessor shall be treated as having assumed Owner’s obligations hereunder only upon the foreclosure of such holder’s Mortgage or the termination of such lessor’s Superior Lease and the taking of possession of the Demised Premises by such holder or lessor, as the case may be.

Section 7.05 Non-Disturbance Agreements: A. Owner represents that as of the date hereof, (x) the only holder of a Mortgage affecting Owner’s interest in the Real Property is Metropolitan Life Insurance Company and (y) the Ground and Development Rights Lease is the only ground or underlying lease affecting the Real Property.

B. Owner has, prior to the execution and delivery of this Lease, requested that the holder of the existing Mortgage enter into an agreement substantially to the effect that in the event of any foreclosure of the existing Mortgage, such holder will not make Tenant a party-defendant to such foreclosure (unless required by law in order to obtain jurisdiction, but in such event, no judgment foreclosing this Lease will be sought) nor disturb its possession under this Lease so long as there shall be no default by Tenant under this Lease beyond applicable grace periods (any such agreement, or any agreement of similar import, is referred to as a “Non-Disturbance Agreement”). Owner shall use reasonable efforts to obtain such Non-Disturbance Agreement. Owner agrees, within a reasonable time after the execution and delivery of any future Mortgage, to request that any then holder or holders of such future Mortgage enter into a Non-Disturbance Agreement with Tenant in such holder’s or holders’ commercially reasonable form and use reasonable efforts to obtain the same. If Owner is unable in good faith to obtain any such Non-Disturbance Agreement, neither the validity of this Lease nor the obligations of Tenant under this Lease shall be affected thereby and Owner shall not be liable to Tenant for its failure to obtain any such Non-Disturbance Agreement, it being intended that Owner’s sole obligation with respect to any such proposed Non-Disturbance Agreement shall be to request, in good faith that such Non-Disturbance Agreement be provided and to use reasonable efforts to obtain the same. If Tenant does not execute and deliver or make comments such agreement within ten (10) days after a draft is provided to Tenant, Owner shall have the right to withdraw its request for any such Non-Disturbance Agreement in which event Owner shall have no further obligation to obtain such an agreement. If required by any holder of any Mortgage, Tenant shall promptly join in any commercially reasonable Non-Disturbance Agreement to indicate its consent with the provisions thereof.

ARTICLE 8

PROPERTY LOSS, ETC.

Section 8.01. Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant’s agent with respect to such property and neither Owner nor Owner’s agents shall be liable for any loss of or damage to any such property by theft or otherwise. Neither (i) the performance by Owner, Tenant or others of any decorations, repairs, alterations, additions or improvements in or to the Building or the
DESTRUCTION-FIRE OR OTHER CASUALTY

Section 9.01. Owner's Repair Obligations: A. If the Demised Premises shall be damaged by fire or other casualty and if Tenant shall give prompt notice to Owner of such damage, Owner, at Owner's expense, shall repair such damage. However, Owner shall have no obligation to repair any damage to, or to replace, Tenant's Personal Property, or any Alterations made to and/or build-out of, the Demised Premises (whether or not paid for in whole or in part with an Owner's work contribution) or any other property or effects of Tenant (all of such Tenant's Personal Property, Alterations and build-out, and other property are further collectively referred to as "Tenant's Property Interest"). Except as otherwise provided in Section 9.03, if the entire Demised Premises shall be rendered untenanted by reason of any such damage to the Demised Premises or damage to the Building due to a fire or other casualty, the Fixed Rent and increases therein pursuant to Article 23 shall abate for the period from the date of such damage to the date when such damage shall have been repaired, and if only a part of the Demised Premises shall be so rendered untenanted, the Fixed Rent and increases therein pursuant to Article 23 shall abate for such period in the proportion which the area of the part of the Demised Premises so rendered untenanted bears to the total area of the Demised Premises (except that with respect to any period(s) in which the Demised Premises shall be comprised of spaces which are then leased at different per square foot rental rates, then with respect to any such periods, the Fixed Rent shall abate equitably for such period(s) on the basis of the area of the part of the Demised Premises so rendered untenanted and the Fixed Rent applicable thereto).

However, if, prior to the date when all of such damage shall have been repaired, any part of the Demised Premises so damaged shall be rendered untenanted and shall be used or occupied by Tenant or any person or persons claiming through or under Tenant, then the amount by which the Fixed Rent and increases therein pursuant to Article 23 shall abate shall be equitably apportioned for the period from the date of any such use or occupancy to the date when all such damage shall have been repaired. The foregoing notwithstanding, Owner agrees that if it is reimbursed by its rent insurance policies covering the Building (with it understood that Owner shall request reimbursement) for any days in the ninety (90) day period following the date that the Demised Premises, or any part thereof, shall be repaired by Owner to the extent required hereunder and prior to the date Tenant shall resume the conduct of its business in the Demised Premises or such part thereof, in which time period Tenant enters or is making arrangements to enter the Demised Premises to prepare to resume occupancy, any abatement with respect to such space shall extend beyond the date that such space has been repaired by Owner by the number of days that such rent insurance policy provides Owner with reimbursement for Tenant to prepare to resume occupancy of the Demised Premises for the conduct of business, up to a maximum extension time period of ninety (90) days. Tenant hereby expressly waives the provisions of Section 227 of the New York Real Property Law, and of any successor law of like import then in force, and Tenant agrees that the provisions of this Article shall govern and control in lieu thereof. Notwithstanding the foregoing provisions of this Section, if, prior to or during the Demised Term, (i) the Demised Premises shall be totally damaged or rendered wholly untenanted by fire or other casualty, and if Owner shall decide not to restore the Demised Premises, or (ii) the Building shall be so damaged by fire or other casualty that, in Owner's opinion, substantial alteration, demolition, or reconstruction of the Building shall be required (whether or not the Demised Premises shall have been damaged or rendered untenanted), then, in any such events, Owner, at Owner's option, may give to Tenant, within ninety (90) days after such fire or other casualty, a five (5) days' notice of termination of this Lease and, in the event such notice is given, this Lease and the Demised Term shall come to an end and expire (whether or not said term shall have commenced) upon the expiration of said five (5) days with the same effect as if the date of expiration of said five (5) days were the Expiration Date, the Fixed Rent shall be apportioned as of such date and any prepaid portion of Fixed Rent for any period after such date shall be refunded by Owner to Tenant.

B. For the purposes of this Section 9.01, if a fire or other casualty occurs with respect to the Demised Premises or any other portion of the Building and Tenant shall be deprived of reasonable means of access to the Demised Premises by reason of such fire or other casualty, then the Demised Premises shall be deemed untenanted.

C. If, at any time during the Rent Holiday Period referred to in Section 1.05 of this Lease, Tenant is entitled pursuant to an abatement of Fixed Rent with respect to all or a portion of the Demised Premises pursuant to this Section 9.01, then the Rent Holiday Period shall not then occur with respect to the Demised Premises or portion thereof for which the Fixed Rent is being abated during such period of abatement, and the Rent Holiday Period will resume with respect to such space once such rent abatement period ceases,
such that in the aggregate Tenant shall have been afforded the whole Rent Holiday Period contemplated by Section 1.05 with respect to the entire Demised Premises during a time when rental would not otherwise be abated pursuant to this Section 9.01, plus any abatement to which Tenant is entitled pursuant to Section 9.01A above.

Section 9.02. **Owner’s Subrogation Waiver Provisions:** Owner shall attempt to obtain and maintain, throughout the Demised Term, in Owner’s fire insurance policies covering the Building, provisions to the effect that such policies shall not be invalidated should the insured waive, in writing, prior to a loss, any or all right of recovery against any party for loss occurring to the Building. In the event that at any time Owner’s fire insurance carriers shall exact an additional premium for the inclusion of such or similar provisions, Owner shall give Tenant notice thereof. In such event, if Tenant agrees, in writing, to reimburse Owner for such additional premium for the remainder of the Demised Term, Owner shall require the inclusion of such or similar provisions by Owner’s fire insurance carriers. As long as such or similar provisions are included in Owner’s fire insurance policies then in force, Owner hereby waives (i) any obligation on the part of Tenant to make repairs to the Demised Premises necessitated or occasioned by fire or other casualty that is an insured risk under such policies, and (ii) any right of recovery against Tenant, any other permitted occupant of the Demised Premises, and any of their servants, employees, agents or contractors, for any loss occasioned by fire or other casualty which is an insured risk under such policies. In the event that at any time Owner’s fire insurance carriers shall not include such or similar provisions in Owner’s fire insurance policies, the waivers set forth in the foregoing sentence shall, upon notice given by Owner to Tenant, be deemed of no further force or effect, and Owner shall have Tenant and each such subtenant or permitted occupant of whom Tenant has given Owner notice named in said policies as an additional insured party but not as a loss payee, provided that if at any time Owner’s fire/casualty insurance carriers shall exact an additional premium for naming Tenant and such parties each as an additional insured party, Tenant shall agree, in writing, to reimburse Owner for such additional premium for the remainder of the Demised Term for so long as Tenant shall elect to be an additional insured party. In the event Tenant or such parties shall be named in such policies as an additional insured party in accordance with the foregoing provisions of this Section, Tenant agrees to endorse promptly and cause such parties to endorse promptly, without recourse, any check, draft or order for the payment of money representing the proceeds of any such policies or representing any other payment growing out of or in connection with any such policies, and in the event Tenant or such party does not promptly endorse such check, draft or order, then Owner shall have the right as Tenant’s attorney-in-fact, to make such endorsement on behalf of Tenant, and Tenant does hereby irrevocably waive any rights to participate in any settlement proceedings and further hereby waives any and all rights in and to any such proceeds and payments. During any period while the foregoing waiver of subrogation provisions or similar provisions are available in Owner’s fire/casualty insurance policies or during any period while Tenant is named as an additional insured party under such policies, Owner shall not look to Tenant but rather to the proceeds of such policies to compensate Owner for any loss occasioned by fire or other casualty which is an insured risk under such policies as if Owner’s policies had included the waiver of subrogation provisions referred to above.

Section 9.03. **Tenant Negligence:** Except to the extent expressly provided in Section 9.02, nothing contained in this Lease shall relieve Tenant of any liability to Owner or to its insurance carriers which Tenant may have under law or the provisions of this Lease in connection with any damage to the Demised Premises or the Building caused by fire or other casualty. Notwithstanding the provisions of Section 9.01, if any such damage, occurring after any date when the waivers set forth in Section 9.02 are no longer in force and effect or when Tenant shall not be named as an additional insured under the insurance policies as described in Section 9.02, is due to the fault or neglect of Tenant, any person claiming through or under Tenant, or any of their servants, employees, agents, contractors, visitors or licensees, then there shall be no abatement of Fixed Rent by reason of such damage; provided, however, that if Owner shall have rent insurance policies in force at that time covering the loss of Fixed Rent for the Demised Premises, and if such policies shall not be affected by the foregoing provisions of this Section 9.03, then, notwithstanding anything contained in this Section 9.03 to the contrary, the Fixed Rent shall abate in accordance with the provisions of Section 9.01, but only to the extent of any proceeds received by Owner under such rent insurance policies with respect to the Demised Premises and the Demised Term.

Section 9.04. **Tenant Subrogation Waiver Provisions:** Tenant acknowledges that it has been advised that Owner’s insurance policies do not cover Tenant’s Property Interest; accordingly, it shall be Tenant’s obligation to obtain and maintain insurance covering Tenant’s Property Interest and loss of profits including, but not limited to, water damage coverage and business interruption insurance (such insurance with respect to loss of profits and business interruption, referred to as “Business Risk Insurance”), provided, however, Tenant may elect to self insure for the risks typically covered under Business Risk Insurance in lieu of purchasing such insurance, with it understood that in no event shall Tenant look to Owner for damages of the nature of those insured under Business Risk Insurance, whether or not Tenant chooses to self insure for such risks. The foregoing provisions of this Section 9.04 shall not limit Owner’s obligations under Section 9.01A of this Lease. Tenant shall attempt to obtain and maintain, throughout the Demised Term, in Tenant’s fire and other insurance policies covering Tenant’s Property Interest, and Tenant’s use and occupancy of the Demised Premises, and/or Tenant’s profits (and shall cause any other permitted occupants of the Demised Premises to attempt to obtain and maintain, in similar policies), provisions to the effect that such policies shall not be invalidated should the insured waive, in writing, prior to a loss, any or all right of recovery against any party for loss occasioned by fire or other casualty which is an insured risk under such policies. In the event that at any time the fire insurance carriers issuing such policies shall exact an additional premium for the inclusion of such or similar provisions, Tenant shall give Owner notice thereof. In such event, if Owner agrees, in writing, to reimburse Tenant or any person claiming through or under Tenant, as the case may be, for such additional premium for the remainder of the Demised Term, Tenant shall require the inclusion of such or similar provisions by such insurance carriers. As long as such or similar provisions are included in such insurance policies then in force, Tenant hereby waives (and agrees to cause any other permitted occupants of the Demised Premises to execute and deliver to Owner written instruments waiving) any right of recovery against Owner, any lessors under any Superior Leases, the holders of any Mortgage, and all other tenants or occupants of the Building, and any servants, employees, agents or contractors of Owner, or of any such lessor or holder or of any such other tenants or occupants (any of such parties other than Owner, “Owner’s Parties”), for any loss occasioned by fire or other casualty which is an insured risk under such policies in the event that at any time the fire insurance carriers issuing such policies shall exact an additional premium for the inclusion of such or similar provisions in any such insurance policy, the waiver set forth in the foregoing sentence (or in any written instrument executed by any other permitted occupant of the Demised Premises) shall, upon notice given by
Tenant to Owner, be deemed of no further force or effect with respect to any insured risks under such policy from and after the giving of such notice, and Tenant and each permitted subtenant and occupant shall have Owner and all of Owner’s Parties named in such policies as additional insured parties, but not as loss payees, provided that if at any time Tenant’s fire/casualty insurance carriers shall exact an additional premium for naming Owner and any parties as additional insured parties, Owner shall agree, in writing, to reimburse Tenant for such additional premium for the remainder of the Demised Term for so long as Owner and such parties shall elect to be an additional insured party. In the event Owner and any such parties shall be named in such policies as additional insured parties in accordance with the foregoing provisions of this Section, Owner agrees to endorse promptly, and to cause any such other parties to endorse promptly, without recourse in either case, any check, draft or order for the payment of money representing the proceeds of any such policies or representing any other payment growing out of or in connection with any such policies, and in the event Owner and such parties do not promptly endorse such check, draft or order, then Tenant shall have the right as Owner’s attorney-in-fact to make such endorsement on behalf of Owner, and Owner does hereby irrevocably waive any and all rights of Owner to participate in any settlement proceedings and any and all rights in and to any such proceeds or payments and agrees that any such policy may state that no such Superior Lessors and Mortgage Holders shall have the right to participate in any settlement proceedings or shall have any rights in or to any such proceeds or payments. During any period while any such waiver of subrogation provisions or similar provisions are in effect, or during any period while Owner is named as an additional insured party under such policy, neither Tenant, nor any person claiming by, through, or under Tenant, shall look to Owner or any of Owner’s Parties, but rather shall look to the proceeds of such policies to compensate Tenant or such other permitted occupant for any loss occasioned by fire or other casualty which is an insured risk under such policies, as if Tenant’s policies had included the waivers of subrogation provisions referred to above.

Section 9.05. Tenant’s Casualty Termination Right - Failure to Rebuild: A. Superseding the provisions of Section 9.01, in the event (a) the Demised Premises or the Building shall be damaged by fire or other casualty and Tenant shall be unable to use the Demised Premises as a result of such damage and (b) Owner shall not exercise the right to terminate this Lease in accordance with the provisions of Section 9.01 and shall, accordingly, be obligated to repair any such damage, then, if such damage is not repaired within the Casualty Restoration Period (as defined herein), Tenant shall have the following options:

(i) to give to Owner, within ten (10) days next following the expiration of the Casualty Restoration Period, a five (5) days’ notice of termination of this Lease, or

(ii) to extend the Casualty Restoration Period for a further period of six (6) months by notice given to Owner within ten (10) days after the expiration of the initial Casualty Restoration Period. In the event Tenant shall have given such notice to Owner extending the initial Casualty Restoration Period and if such damage shall not have been repaired by Owner within any extended Casualty Restoration Period, Tenant shall have the options to (a) further extend the Casualty Restoration Period for further successive periods of six (6) months, by notice given to Owner within ten (10) days after the expiration of any extended Casualty Restoration Period or (b) to give Owner, within ten (10) days after the expiration of any such extended Casualty Restoration Period a five (5) days’ notice of termination of this Lease.

The term “Casualty Restoration Period” shall mean eighteen (18) months after the date of such fire or other casualty.

B. Notwithstanding anything to the contrary contained in the provisions of Subsection A of this Section 9.05, in the event (a) the Demised Premises or the Building shall be damaged by fire or other casualty and Tenant shall be unable to use the Demised Premises as a result of such damage and (b) Owner shall not exercise the right to terminate this Lease in accordance with the provisions of Section 9.01, then Owner shall, within one hundred twenty (120) days after the date of such fire or casualty, give a notice to Tenant, stating the length of time that Owner estimates the repair of such damage to the Demised Premises or Building will reasonably require (the “Estimate Notice”). In the event that Owner shall determine that the repair of such damage to the Demised Premises or Building will reasonably require a period longer than the Casualty Restoration Period, then by virtue of Owner’s delivery of the Estimate Notice, (x) the initial Casualty Restoration Period set forth in Subsection A of this Section 9.05, shall be so extended to the period provided in the Estimate Notice, and (y) Tenant shall have the further option to give to Owner a five (5) days’ notice of termination of this Lease within ten (10) days next following the giving of such notice under this Paragraph B by Owner to Tenant extending the initial Casualty Restoration Period.

C. Time of the essence with respect to the giving by Tenant to Owner of any notice in accordance with the provisions of Subsections A and B of this Section 9.05 and in the event that Tenant shall fail to give any such notice within the time periods set forth therein, Tenant shall be deemed to have given to Owner a notice pursuant to subdivision (ii) of Subsection A of this Section 9.05 extending the Casualty Restoration Period provided, however, that any five (5) days’ notice of termination given by Tenant pursuant to the provisions of Subsection A or B of this Section 9.05 beyond the ten (10) day period provided therein shall be void and of no force and effect.

D. In the event that Tenant shall give to Owner within the applicable time periods set forth in the foregoing provisions of this Section a five (5) days’ notice of termination of this Lease, this Lease and the Demised Term shall come to an end and expire upon the expiration of said five (5) days with the same effect as if the date of expiration of said five (5) days were the Expiration Date, the Fixed Rent and all increases thereof shall be apportioned as of such date, and any prepaid portion of Fixed Rent and increases thereof for any period after such date shall be refunded by Owner to Tenant.

E. Nothing contained in the foregoing provisions of this Section 9.05 shall be deemed to affect the rights of Owner to give to Tenant a five (5) days’ notice of termination of this Lease in accordance with the provisions of Subdivision (i) of the last sentence of Section 9.01A and the provisions of
ARTICLE 10

EMINENT DOMAIN

Section 10.01. Taking of the Demised Premises: If the whole of the Demised Premises shall be acquired for any public or quasi-public use or purpose, whether by condemnation or by deed in lieu of condemnation, this Lease and the Demised Term shall end as of the date of the vesting of title with the same effect as if said date were the Expiration Date. If only a part of the Demised Premises shall be so acquired or condemned then, except as otherwise provided in this Section, this Lease and the Demised Term shall continue in force and effect but, from and after the date of the vesting of title, the Fixed Rent shall be reduced in the proportion which the area of the part of the Demised Premises so acquired or condemned bears to the total area of the Demised Premises immediately prior to such acquisition or condemnation (except that with respect to any period(s) in which the Demised Premises shall be, or would have been, absent such acquisition or condemnation, comprised of spaces which are or would be then leased at different per square foot rental rates, then with respect to any such periods, the Fixed Rent shall be reduced equitably on the basis of the area of the Demised Premises so condemned and the Fixed Rent applicable thereto). If only a part of the Real Property shall be so acquired or condemned, then (i) whether or not the Demised Premises shall be affected thereby, Owner, at Owner’s option, may give to Tenant, within sixty (60) days next following the date upon which Owner shall have received notice of vesting of title, a five (5) days’ notice of termination of this Lease, and (ii) if the part of the Real Property so acquired or condemned shall contain more than ten (10%) percent of the Demised Premises located above the lobby level of the Building immediately prior to such acquisition or condemnation, or if, by reason of such acquisition or condemnation, Tenant no longer has reasonable means of access to the Demised Premises, Tenant, at Tenant’s option, may give to Owner, within sixty (60) days next following the date upon which Tenant shall have received notice of vesting of title, a five (5) days’ notice of termination of this Lease. In the event any such five (5) days’ notice of termination is given, by Owner or Tenant, this Lease and the Demised Term shall come to an end and expire upon the expiration of said five (5) days with the same effect as if the date of expiration of said five (5) days were the Expiration Date. If a part of the Demised Premises shall be so acquired or condemned and this Lease and the Demised Term shall not be terminated pursuant to the foregoing provisions of this Section, Owner, at Owner’s expense, shall restore that part of the Demised Premises not so acquired or condemned to a self-contained rental unit. In the event of any termination of this Lease and the Demised Term pursuant to the provisions of this Section, the Fixed Rent shall be apportioned as of the date of such termination and any prepaid portion of Fixed Rent for any period after such date shall be refunded by Owner to Tenant.

Section 10.02. Condemnation Award or Claims: In the event of any such acquisition or condemnation of all or any part of the Real Property, Owner shall be entitled to receive the entire award for any such acquisition or condemnation, Tenant shall have no claim against Owner or the condemning authority for the value of any unexpired portion of the Demised Term and Tenant hereby expressly assigns to Owner all of its right in and to any such award. Nothing contained in this Section shall be deemed to prevent Tenant from making a claim in any condemnation proceedings for the value of any items of Tenant’s Personal Property which are compensable, in law, as trade fixtures, or provided that such claim is authorized by law and will not in any way diminish the award to which Owner would be entitled if no such claim were made, for Tenant’s relocation and moving expenses.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

Section 11.01. General Covenant: Except as otherwise expressly set forth in this Article 11, Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, covenants that, without the prior consent of Owner in each instance, it shall not (i) assign (whether by merger, consolidation or otherwise), mortgage or encumber its interest in this Lease, in whole or in part, or (ii) sublet, or permit the subletting of, the Demised Premises or any part thereof, or (iii) permit the Demised Premises or any part thereof to be occupied, or used for desk space, mailing privileges or otherwise, by any person other than Tenant. The sale, pledge, transfer or other alienation of (a) any controlling interest in the issued and outstanding capital stock of any corporate Tenant (unless such stock is publicly traded on a recognized security exchange or over-the-counter market both before and after such transaction or unless such sale, pledge, transfer or other alienation is in connection with any initial public offering which shall result in such shares being traded, after such offering, on a recognized securities exchange or over-the-counter market) or (b) any controlling interest in any partnership, limited liability company or joint venture or other business entity comprising Tenant, however accomplished, directly or indirectly and whether in a single transaction or in a series of related and/or unrelated transactions, shall be deemed for the purposes of this Section as an assignment of this Lease which shall require the prior consent of Owner in each instance. The term “control” or any word or phrase or similar import as used in this Article 11 shall have the meaning ascribed thereto in Section 11.05 of this Lease.

Section 11.02. Owner’s Rights Upon Assignment: If Tenant’s interest in this Lease is assigned, whether or not in violation of the provisions of this Article, Owner may collect rent from the assignee; if the Demised Premises or any part thereof are sublet to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this Article, Owner, after default by Tenant under this Lease after notice and the applicable cure period set forth in this Lease, may collect rent from the subtenant, user or occupant. In either case, Owner shall apply the net amount collected to the rents reserved in this Lease, but neither any such assignment, subletting, occupancy, or use, whether with or without Owner’s prior consent, nor any such collection or application, shall be deemed a waiver of any term, covenant or condition of this Lease or the acceptance by Owner of such assignee, subtenant, occupant or user as tenant. The consent by Owner to any assignment, subletting, occupancy or use shall not relieve Tenant from its obligation to obtain the express prior consent of Owner to any further assignment, subletting, occupancy or use, provided that this sentence shall not affect the provisions of Section 11.05, Section 11.06 or Section 11.07, which permit certain actions by Tenant.
without Owner’s consent. If this Lease is assigned to any person or entity pursuant to any proceeding of the type referred to in Subsections 16.01(c) and 16.01(d), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Owner, shall be and remain the exclusive property of Owner and shall not constitute property of Tenant or of the estate of Tenant within the meaning of any proceeding of the type referred to in Subsections 16.01(c) and 16.01(d). Any and all monies or other considerations constituting Owner’s property under the preceding sentence not paid or delivered to Owner shall be held in trust for the benefit of Owner and shall be promptly paid to or turned over to Owner. Any person or entity to which this Lease is assigned pursuant to any proceeding of the type referred to in Subsections 16.01(c) and 16.01(d) shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall execute and deliver to Owner upon demand an instrument confirming such assumption. The listing of any name other than that of Tenant on any door of the Demised Premises or on any directory or in any elevator in the Building, or otherwise, shall not operate to vest in the person so named any right or interest in this Lease or in the Demised Premises, or the Building, or be deemed to constitute, or serve as a substitute for, any prior consent of Owner required under this Article. Tenant agrees to pay to Owner reasonable counsel fees incurred by Owner in connection with any proposed assignment of Tenant’s interest in this Lease or any proposed subletting of the Demised Premises or any part thereof. Neither any assignment of Tenant’s interest in this Lease nor any subletting, occupancy or use of the Demised Premises or any part thereof by any person other than Tenant, nor any collection of rent by Owner from any person other than Tenant as provided in this Section, nor any application of any such rent as provided in this Section shall, in any circumstances, relieve Tenant of its obligation fully to observe and perform the terms, covenants and conditions of this Lease on Tenant’s part to be observed or performed.

Section 11.03. Sublet Rights

A. (1) As long as Tenant is not in default (i) under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed, other than the payment of Fixed Rent and increases thereto due under Article 23 of this Lease, beyond the applicable notice and grace period set forth in this Lease, or (ii) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Owner agrees not to unreasonably withhold or delay Owner’s prior consent to sublettings by Tenant of all or parts of the Demised Premises to not more than four (4) subtenants. Each such subletting shall be for undivided occupancy by the subtenant of that part of the Demised Premises affected thereby, for the use expressly permitted in this Lease, and at no time shall there be more than four (4) occupants, including Tenant, on any one floor.

(2) Without Owner’s prior consent, Tenant shall not (a) negotiate or enter into a proposed subletting with any tenant, subtenant or occupant of any space in the Building or (b) publicly list or publicly advertise the Demised Premises or any part thereof for subletting at a rental lower than the rental at which the Owner is then offering to rent comparable space in the Building (as opposed to seeking a lower rental which is not publicly advertised).

(3) At least thirty (30) days prior to any proposed subletting, Tenant shall submit to Owner a statement (the “Proposed Sublet Statement”) containing the name and address of the proposed subtenant, the nature of the proposed subtenant’s business and its current financial status, if such status is obtained or obtainable by Tenant, and all of the principal terms and conditions of the proposed subletting including, but not limited to, the proposed commencement and expiration dates of the term thereof. Unless the proposed sublet area shall constitute only an entire floor (or floors), the Proposed Sublet Statement shall be accompanied by a floor plan delineating the proposed sublet area.

(4) Owner may withhold consent to a proposed subletting if, (a) in Owner’s reasonable judgment, the occupancy of the proposed subtenant will impair the character or dignity of the Building or impose any additional material burden upon Owner in the operation of the Building, (b) the proposed subtenant shall be a person or entity with whom Owner is then negotiating or discussing to lease space in the Building, provided Owner then has, or reasonably expects to have, comparable space available for leasing, or (c) Owner shall have any other reasonable objections to such subletting (it being agreed that the fact that the sublease rent is lower than the rent under this Lease or lower than the rental rate at which Owner is then offering to rent comparable space in the Building shall not be a reasonable objection).

(5) In the event of any dispute between Owner and Tenant as to the reasonableness of Owner’s failure or refusal to consent to any subletting, such dispute shall be submitted to arbitration in accordance with the provisions of Article 36.

(6) Any Sublease consented to by Owner must conform to the information contained in the Proposed Sublet Statement and shall expressly provide that (a) the subtenant shall obtain provisions in its insurance policies to the effect that such policies shall not be invalidated should the insured waive, in writing, prior to a loss, any or all right of recovery against any party for loss occasioned by fire or other casualty which is an insured risk under such policies, as set forth in Section 9.04, and (b) in the event of the termination, re-entry or dispossess of Tenant by Owner under this Lease, Owner may, at its option, take over all of the right, title and interest of Tenant, as sublessor under the sublease, and such subtenant shall, at Owner’s option, attorn to Owner pursuant to the then executory provisions of such sublease, except that Owner shall not (i) be liable for any act or omission of Tenant under such sublease prior to such attornment by subtenant, (ii) be subject to any offset which accrued to such subtenant against Tenant, (iii) be bound by any previous modification of such sublease or by any previous prepayment of more than one month’s rent unless such modification or prepayment was previously approved by Owner, (iv) be bound by any covenant to undertake or complete any construction of the premises, or any portion thereof, demised by such sublease and (v) be bound by any obligation to make any payment to or on behalf of the subtenant, except for services, repairs, maintenance and restoration provided for under the sublease to be performed after the date of such termination, re-entry or dispossess by Owner under this Lease and to which Owner is expressly required to perform under this Lease with respect to the subleased space at Owner’s expense, it being expressly understood, however, that Owner shall not be bound by any obligation to make payment to or on behalf of a subtenant with respect to construction performed by or on behalf of such subtenant in the subleased premises. Tenant shall reimburse Owner within thirty (30)
days following demand for any reasonable out-of-pocket costs or expense that shall be incurred by Owner’s review of any
Proposed Sublet Statement or in connection with any sublease consented to by Owner, including, without limitation, any
reasonable processing fee, reasonable attorneys’ fees and disbursements and the reasonable costs of making investigations
as to the acceptability of the proposed subtenant.

B. Notwithstanding the foregoing provisions of this Section 11.03, Owner shall have the following rights with respect to each proposed subletting by Tenant:

(1) In the event Tenant proposes to sublet all or substantially all of the Demised Premises, Owner, at Owner’s option, may give to Tenant, within thirty (30) days after the submission by Tenant to Owner of the Proposed Sublet Statement, a notice terminating this Lease on the date (referred to as the “Earlier Termination Date”) immediately prior to the proposed commencement date of the term of the proposed subletting, as set forth in such Proposed Sublet Statement, and, in the event such notice is given, this Lease and the Demised Term shall come to an end and expire on the Earlier Termination Date with the same effect as if it were the Expiration Date, the Fixed Rent shall be apportioned as of said Earlier Termination Date and any prepaid portion of Fixed Rent for any period after such date shall be refunded by Owner to Tenant; or

(2) In the event Tenant proposes to sublet all of the Demised Premises, Owner, at Owner’s option, may give to Tenant, within thirty (30) days after the submission by Tenant to Owner of the Proposed Sublet Statement, a notice electing to eliminate such portion of the Demised Premises (said portion is referred to as the “Eliminated Space”) from the Demised Premises during the period (referred to as the “Elimination Period”) commencing on the proposed commencement date (referred to as “Elimination Date”), as set forth in the Proposed Sublet Statement, and ending on the proposed expiration date of the term of the proposed subletting, as set forth in the Proposed Sublet Statement, and in the event such notice is given the following shall apply:

(a) The Eliminated Space shall be eliminated from the Demised Premises during the Elimination Period;

(b) Tenant shall surrender the Eliminated Space to Owner on or prior to the Elimination Date in the same manner as if said Elimination Date were the Expiration Date;

(c) If the Eliminated Space shall constitute less than an entire floor, (i) Owner, at Owner’s expense, shall have the right to make any reasonable alterations and installations in the Demised Premises required, in Owner’s judgment, reasonably exercised, to make the Eliminated Space a self-contained rental unit with access through corridors to the elevators and core toilets serving the Eliminated Space, and if the Demised Premises shall contain any core toilets (for the purposes of this Article core toilets shall be deemed to include any unisex toilets) or any corridors (including any corridors proposed to be constructed by Owner pursuant to this subdivision (c), providing access from the Eliminated Space to the core area), (ii) Owner and any tenant or other occupant of the Eliminated Space shall have the right to use such toilets and corridors in common with Tenant and any other permitted occupants of the Demised Premises, and the right to install signs and directional indicators in or about such corridors indicating the name and location of such tenant or other occupant;

(d) During the Elimination Period, the Fixed Rent, the Demised Premises Area and Tenant’s Proportionate Share (as defined in Article 23), shall each be reduced in the proportion which the area of the Eliminated Space bears to the total area of the Demised Premises immediately prior to the Elimination Date (including an equitable portion of the area of any corridors referred to in subdivision (c) of this Subsection 11.03.B.(2) as part of the area of the Eliminated Space for the purpose of computing such reduction), (except that with respect to any period(s) in which the Demised Premises shall be, or would have been, absent such elimination comprised of spaces which are then or would be leased at different per square foot rental rates, then with respect to any such periods, the Fixed Rent shall be equitably reduced on the basis of the Eliminated Space and the Fixed Rent applicable thereto) and in the event that the Eliminated Space shall be the entire Demised Premises, during the Elimination Period, Tenant shall have no rights with respect to the Demised Premises nor any obligations with respect to the Demised Premises, including, but not limited to, any obligations to pay Fixed Rent or any increases therein or any additional rent, and any prepaid portion of Fixed Rent for any period after the Elimination Date allocable to the Elimination Space shall be refunded by Owner to Tenant;

(e) There shall be an equitable apportionment of any increase in the Fixed Rent pursuant to Article 23 for the Escalation Year and Tax Escalation Year (as defined in Article 23) in which said Elimination Date shall occur;

(f) If the Elimination Period shall end prior to the Expiration Date, the Eliminated Space, in its then existing condition, shall be deemed restored to and once again a part of the Demised Premises during the period (referred to as the “Restoration Period”) commencing on the date next following the expiration of the Elimination Period and ending on the Expiration Date;

(g) During the Restoration Period, if any, the Fixed Rent, the Demised Premises Area and Tenant’s Proportionate Share shall each be increased in the proportion which the area of the Eliminated Space bears to the total area of the Demised Premises immediately prior to the commencement of the Restoration Period (including an equitable portion of the area of any corridors referred to in subdivision (c) of this Subsection 11.03.B.(2) as a part of the area of the Eliminated Space for the purpose of computing such increase) (except that with respect to any period(s) during the Restoration Period in which the Demised Premises shall be comprised of spaces which are then leased at different per square
foot rental rates, then with respect to any such periods, the Fixed Rent shall be equitably increased on the basis of the Eliminated Space and the Fixed Rent applicable thereto (computed as if the Fixed Rent were never reduced pursuant to the provisions of Section 11.03(2)(d)) and in the event that the Eliminated Space shall be the entire Demised Premises, during the Restoration Period, the Demised Premises, in its then existing condition, shall be deemed restored to Tenant and Tenant shall have all rights with respect to the Demised Premises which are set forth in this Lease and all obligations with respect to the Demised Premises which are set forth in this Lease, including, but not limited to, the obligations for the payment of Fixed Rent and any increases therein (as it would have been adjusted if Tenant occupied the Demised Premises during the Elimination Period) and any additional rent; and

There shall be an equitable apportionment of any increase in the Fixed Rent pursuant to Article 23 for the Escalation Year and Tax Escalation Year in which the Restoration Period, if any, shall commence.

However, notwithstanding the foregoing, Owner and Tenant acknowledge the possibility that all or any of the tenants or occupants of the Eliminated Space may not have vacated and surrendered all or any portions of the Eliminated Space to Owner by the commencement of the Restoration Period; accordingly, notwithstanding anything to the contrary contained in the foregoing provisions of this Subsection B, the following shall apply:

the Restoration Period applicable to the Eliminated Space shall commence on the commencement date of the Restoration Period with respect to those portions, if any, of the Eliminated Space which are vacant on the commencement of the Restoration Period and with respect to those portions, if any, of the Eliminated Space which are not vacant on the commencement of the Restoration Period on the respective later date or dates upon which such portions of the Eliminated Space become vacant and Owner gives notice to Tenant of such vacancy but the Expiration Date shall not be affected thereby, the increases in the Fixed Rent, the Demised Premises Area and Tenant’s Proportionate Share shall be equitably adjusted to reflect the fact that all or any portions of the Eliminated Space have not been restored to Tenant on the commencement of the Restoration Period but are restored to Tenant and included back in the Demised Premises on a date or dates after the commencement of the Restoration Period;

except as expressly set forth in this Subsection 11.03.B. to the contrary, neither the validity of this Lease nor the obligations of Tenant under this Lease shall be affected thereby; and

Tenant waives any rights to rescind this Lease and to recover any damages which may result from the failure of Owner to deliver possession of all or any portions of the Eliminated Space on the commencement of the Restoration Period; Owner agrees to institute within thirty (30) days after the commencement of the Restoration Period, possession proceedings against any tenants and occupants who have not so vacated and surrendered all or any portions of the Eliminated Space, and agrees to prosecute such proceedings with reasonable diligence.

At the request of either Owner or Tenant, the other shall execute and deliver an instrument or instruments, in form reasonably satisfactory to Owner and Tenant, setting forth any modifications to this Lease contemplated in or resulting from the operation of the foregoing provisions of this Section 11.03; however, neither party’s failure to request any such instrument nor its failure to execute or deliver any such instrument shall vitiate the effect of the foregoing provisions of this Section. The failure by Owner to exercise any option under this Section 11.03 with respect to any subletting shall not be deemed a waiver of such option with respect to any extension of such subletting (other than an extension made pursuant to a right set forth in the sublease at the time the subletting was consented to by Owner) or any subsequent subletting of the premises affected thereby or any other portion of the Demised Premises. Tenant agrees to indemnify Owner from all loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees and disbursements, arising from any claims against Owner by any broker or other person, for a brokerage commission or other similar compensation in connection with any such proposed subletting, in the event (a) Owner shall (i) fail or refuse to consent to any proposed subletting, or (ii) exercise any of its options under this Section 11.03, or (b) any proposed subletting shall fail to be consummated for any reason whatsoever.

C. Tenant agrees that if Owner shall fail to exercise its option to sooner terminate this Lease in connection with any proposed subletting by Tenant of all or substantially all of the Demised Premises, or its option to eliminate the Demised Premises or to eliminate from the Demised Premises any portion thereof, in connection with any proposed subletting by Tenant of the entire Demised Premises or any portion thereof, or if any subtenant or other person claiming through or under Tenant shall sublet all or any portion of the Demised Premises, Tenant shall pay to Owner a sum equal to fifty percent (50%) of any Subletting Profit, as such term is hereinafter defined. The amount by which (I) all rentals and other sums (including, but not limited to, sums payable for the sale or rental of any fixtures, leasehold improvements, equipment, furniture or other personal property, less, in the case of the sale thereof, the then net unamortized cost thereof (amortized in accordance with generally accepted accounting principles), which were provided and installed in the sublet premises at the sole cost and expense of Tenant or such subtenant or other person claiming through or under Tenant and for which no allowance or other credit has been given by Owner) payable by any subtenant to Tenant or to any subtenant or other person claiming through or under Tenant in connection with (i) any subletting of the entire Demised Premises in excess of the Fixed Rent and increases therein pursuant to Article 23 then payable by Tenant to Owner under this Lease, or (ii) any subletting of a portion of the Demised Premises in excess of that proportion of the Fixed Rent and increases therein pursuant to Article 23 applicable to the floor on which the portion of the Demised Premises so sublet is located payable by Tenant to Owner under this Lease which the area of the portion of the Demised Premises so sublet bears to the total area of the Demised Premises on said floor on which the portion of the Demised Premises so sublet is located, shall exceed (II) Sublease Expenses (as defined herein), is referred to, in the aggregate, as “Subletting Profit”. In computing any Subletting Profit it shall be deemed that
the rental reserved under any such subletting shall commence to accrue as of the commencement of the term of such subletting even if such rental actually commences to accrue as of a date subsequent to such commencement. The term “Sublease Expenses” shall mean the aggregate of the following out of pocket costs and expenses to the extent actually incurred by Tenant in connection with a subletting, amortized on a straight-line basis over the entire term of such subletting: (a) a reasonable brokerage commission (with 1.5 of the then standard brokerage commission being deemed to be a reasonable commission), (b) reasonable attorneys’ fees in connection with consummating the sublease, (c) reasonable alteration costs to prepare the space being sublet for such subletting, (d) reasonable work contributions actually granted to such subtenant, and (e) reasonable rent abatements granted to such subtenant. Tenant agrees that if Tenant, or any subtenant or other person claiming through or under Tenant, shall assign or have assigned its interest as Tenant under this Lease or its interest as subtenant under any sublease, as the case may be, whether or not such assignment shall be effected with court approval in a proceeding of the types described in Subsections 16.01(c) or (d), or in any similar proceeding, or otherwise, Tenant shall pay to Owner a sum equal to any consideration paid to Tenant or any subtenant or other person claiming through or under Tenant for such assignment. Tenant shall use reasonable efforts to obtain payment of any amounts of such consideration payable to Tenant. All sums payable hereunder to Tenant shall be paid to Owner as additional rent within thirty (30) days of such sums being paid to Tenant or to any subtenant or other person claiming through or under Tenant and, if requested by Owner, Tenant shall promptly enter into a written agreement with Owner reasonably satisfactory to Owner and Tenant setting forth the amount of such sums to be paid to Owner; however, neither Owner’s failure to request the execution of such agreement nor Tenant’s failure to execute such agreement shall vitiate the provisions of this Section. For the purposes of this Article, a trustee, receiver or other representative of the Tenant’s or any subtenant’s estate under any federal or state bankruptcy act shall be deemed a person claiming through or under Tenant.

D. Neither Owner’s consent to any such subletting nor anything contained in this Section shall be deemed to be granted to any subtenant or other person claiming through or under Tenant the right to sublet all or any portion of the Demised Premises or to permit the occupancy of all or any portion of the Demised Premises by others. Neither any subtenant referred to in this Section nor its heirs, distributees, executors, administrators, legal representatives, successors nor assigns, without the prior consent of Owner in each instance, shall (i) assign (whether by merger, consolidation or otherwise), mortgage or encumber its interest in any sublease, in whole or in part, (ii) sublet, or permit the subletting of, that part of the Demised Premises affected by such subletting or any portion thereof; or (iii) permit such part of the Demised Premises affected by such subletting or any portion thereof to be occupied or used for desk space, mailing privileges or otherwise, by any person other than such subtenant and any sublease shall provide that any violation of the foregoing provisions of this sentence shall be an event of default thereunder. The sale, pledge, transfer or other alienation of (a) any controlling interest of the issued and outstanding capital stock of any corporate subtenant (unless such stock is publicly traded on any recognized security exchange or over-the-counter market both before and after such transaction or unless such sale, pledge, transfer or other alienation is in connection with any initial public offering which shall result in such shares being traded, after such offering, on a recognized securities exchange or over-the-counter market) or (b) any controlling interest in any subtenancy shall be void, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, shall be deemed for the purposes of this Article to be an assignment of such sublease which shall require the prior consent of Owner in each instance and any sublease shall so provide. Any rights granted to Tenant under Section 11.07 shall be granted to any permitted subtenant under this Lease, subject to the terms and conditions thereof and with the term “Tenant” as used therein meaning such subtenant and the “Required Net Worth” test being the tangible net worth of such subtenant upon the consummation of the subletting.

Section 11.04. Owner’s Rights Upon Lease Disaffirmance. A. In the event that, at any time after Tenant may have assigned Tenant’s interest in this Lease, this Lease shall be disaffirmed or rejected in any proceeding of the types described in Subsections 16.01(c) and (d), or in any similar proceeding, or in the event of termination of this Lease by reason of any of such proceeding or by reason of lapse of time following notice of termination given pursuant to Section 16.01 based upon any of the Events of Default set forth in said Subsections, Tenant, upon request of Owner given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Owner in the event of a disaffirmance or rejection or in the event of termination other than by act of Owner), shall (i) pay to Owner all Fixed Rent, additional rent and other charges due and owing by the assignee to Owner under this Lease to and including the date of such disaffirmance, rejection or termination, and (ii) as “tenant,” enter into a new lease with Owner of the Demised Premises for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date unless sooner terminated as in such lease provided, at the same Fixed Rent and then executory terms, covenants and conditions as are contained in this Lease, except that (a) Tenant’s rights under the new executory lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any statute or of any order of any court, and (b) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (c) such new lease shall require Tenant to pay all increases in the Fixed Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of Article 23 of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. In the event Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Owner’s request therefor then, in addition to all other rights and remedies by reason of such default, either at law or in equity, Owner shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as at the commencement date thereof by reason of Tenant’s default thereunder. Nothing contained in this Section shall be deemed to grant to Tenant any right to assign Tenant’s interest in this Lease.

B. If Tenant assumes this Lease in any proceeding of the types described in Subsections 16.01(c) and (d), or in any similar proceeding and proposes to assign the same pursuant to said proceeding to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Tenant, then notice of such proposed assignment shall be given to Owner by Tenant no later than twenty (20) days after receipt of such offer, but in any event no later than ten (10) days prior to the date thereof. Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption. Such notice shall set forth (a) the name and address of such person, (b) all of the terms and
conditions of such offer, and (c) adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365(b)(3) of the United States Bankruptcy Code or any provisions in substitution thereof. Owner shall have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which would otherwise be payable by Tenant out of the consideration to be paid by such person in connection with the assignment of this Lease.

C. The term “adequate assurance of future performance” as used in this Lease shall mean that any proposed assignee shall, among other things, (a) deposit with Owner on the assumption of this Lease the sum of nine (9) months of the then Fixed Rent and increases therein pursuant to Article 23 as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (b) furnish Owner with financial statements of such assignee for the prior three (3) fiscal years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth of at least six (6) times the Fixed Rent and increases therein pursuant to Article 23 then payable for each of such three (3) years, (c) grant to Owner a security interest in such property of the proposed assigned as Owner shall deem necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

Section 11.05. Subsidiaries/Affiliates. A. As long as Tenant is not in default (i) under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed, other than the payment of Fixed Rent and increases thereto due under Article 23 of this Lease, beyond the applicable notice and grace period set forth in this Lease, or (ii) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Tenant shall have the right, without the prior consent of Owner, to assign its interest in this Lease, for the use permitted in this Lease, to any subsidiary or affiliate of Tenant, which is in the same general line of business as Tenant or another line of business consistent with that of a tenant of first class office space in a Class A Building in mid-town Manhattan (and, in any event, not allowing for “off the street traffic”) and only for such period as it shall remain a subsidiary or affiliate of Tenant and in such line of business. For the purposes of this Article: (a) a “subsidiary” of Tenant shall mean any corporation, partnership or other business entity not less than fifty-one (51%) percent of whose outstanding voting stock or other equity interest at the time shall be owned by Tenant, and (b) an “affiliate” of Tenant shall mean any corporation, partnership or other business entity which controls or is controlled by, or is under common control with Tenant. For the purpose of the definition of “affiliate” the word “control” (including, “controlled by” and “under common control with”) as used with respect to any corporation, partnership or other business entity, shall mean the possession of the power to direct or cause the direction of the management and policies of such corporation, partnership or other business entity, whether through the ownership of voting securities or contract. No such assignment shall be valid or effective unless, within ten (10) days prior to the execution thereof (or if Legal Requirements prohibit such prior delivery within five (5) business days after the same shall first allow for such disclosure), Tenant shall deliver to Owner all of the following: (i) a duplicate original instrument of assignment, in form and substance reasonably satisfactory to Owner, duly executed by Tenant, in which Tenant shall (a) waive all notices of default given to the assignee, and all other notices of every kind or description now or hereafter provided in this Lease, by statute or rule of law, and (b) acknowledge that Tenant’s obligations with respect to this Lease shall not be discharged, released or impaired by (i) such assignment, (ii) any amendment or modification of this Lease, whether or not the obligations of Tenant are increased thereby, (iii) any further assignment or transfer of Tenant’s interest in this Lease, (iv) any exercise, non exercise or waiver by Owner of any right, remedy, power or privilege under or with respect to this Lease, (v) any waiver, consent, extension, indulgence or other act or omission with respect to any other obligations of Tenant under this Lease, (vi) any act or thing which, but for the provisions of such assignment, might be deemed a legal or equitable discharge of a surety or assignor, to all of which Tenant shall consent in advance, and (c) expressly waive and surrender any then existing defense to its liability hereunder not being the purpose and intent of Owner and Tenant that the obligations of Tenant hereunder as assignor shall be absolute and unconditional under any and all circumstances, and (ii) an instrument, in form and substance satisfactory to Owner, duly executed by the assignee, in which such assignee shall assume the observance and performance of, and agree to be personally bound by, all of the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed. The provisions of Subsection C of Section 11.03 relating to Owner’s rights to assignment consideration shall not be applicable to any proposed assignment to any such subsidiary or affiliate of Tenant pursuant to the provisions of this Subsection A of this Section 11.05.

B. As long as Tenant is not in default (i) under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed, other than the payment of Fixed Rent and increases thereto due under Article 23 of this Lease, beyond the applicable notice and grace period set forth in this Lease, or (ii) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Tenant shall have the right, without the prior consent of Owner, to sublet the Demised Premises to, or permit the use or occupancy of, all or any part of the Demised Premises by any subsidiary or affiliate (as said terms are defined in Subsection A above) of Tenant for the use permitted in this Lease provided that such subsidiary or affiliate is in the same general line of business as so described herein. However, no such subletting shall be valid unless, prior to the execution thereof, Tenant shall give notice to Owner of the proposed subletting, and within ten (10) days prior to the commencement of said subletting (or if Legal Requirements prohibit such prior delivery within five (5) business days after the same shall first allow for such disclosure), Tenant shall deliver to Owner an agreement, in form and substance satisfactory to Owner, duly executed by Tenant and said subtenant, in which said subtenant shall assume performance of and agree to be personally bound by, all of the terms, covenants and conditions of this Lease which are applicable to said subtenant and such subletting. Tenant shall give prompt notice to Owner of any such use or occupancy of all or any part of the Demised Premises and such use or occupancy shall be subject and subordinate to all of the terms, covenants and conditions of this Lease. No such use or occupancy shall operate to vest in the user or occupant any right or interest in this Lease or the Demised Premises. Tenant shall be responsible for Owner’s reasonable attorneys’ fees and expenses in connection with a transaction made or purported to be made pursuant to this Section B. The provisions of Subsection B of 11.03 relating to Owner’s option to terminate this Lease or
recapture the Demised Premises and of C of Section 11.03 relating to Owner’s rights to Subletting Profits shall not be applicable to any proposed subletting to any such subsidiary or affiliate of Tenant pursuant to the provisions of this Subsection B of this Section 11.05.

Section 11.06. Permitted Occupants: Supposing the provisions of this Article 11 and notwithstanding anything contained herein to the contrary, Tenant shall have the right from time to time, without prior consent of Owner to permit undivided occupancy of various portions of the Demised Premises (meaning no separate entrance to such portions of the Demised Premises) not to exceed an aggregate of ten percent (10%) of the rentable square feet of the Demised Premises at any one time during the Demised Term by persons with whom Tenant has an on-going professional relationship (ie: so-called “friends of the firm”), provided that such persons are not a tenant, subtenant or occupant of any space in the Building nor a party with whom Owner is then negotiating or discussing to lease space in the Building (any such persons referred to individually and collectively as “Permitted Occupants”), and provided further that no rent or use fee shall be paid with respect to such occupancy in excess of the rental paid by Tenant to Owner on account of such space. The occupancy by any Permitted Occupant shall be conditioned upon the agreement that (x) such arrangement will terminate automatically upon the termination of this Lease and (y) no such use or occupancy by any such persons shall operate to give any such persons any right or interest in this Lease or the Demised Premises other than the right to occupy such portion of the Demised Premises during the Demised Term, and (z) such use or occupancy shall be subject and subordinate to all of the terms, covenants and condition of this Lease (collectively, the “Permitted Occupancy Requirements”). Tenant shall deliver to Owner a notice prior to any such occupancy advising Owner of the name of any such Permitted Occupant and the character and nature of the business to be conducted by the Permitted Occupant in the Demised Premises and the expected duration of the same, and attaching a copy of an executed license or use agreement with the Permitted Occupant with respect to the Demised Premises, which license or use agreement shall explicitly state such Permitted Occupant’s acknowledgment of the Permitted Occupancy Requirements.

Section 11.07. Merger/Consolidation/Asset Sale: As long as Tenant is not in default (i) under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed, other than the payment of Fixed Rent and increases thereto due under Article 23 of this Lease, beyond the applicable notice and grace period set forth in this Lease, or (ii) of the covenants to pay the Fixed Rent and increases thereto under Article 23, Tenant shall have the right, without the prior consent of Owner, to assign Tenant’s interest in this Lease to any person, corporation, partnership, or other business entity which is a successor of Tenant, either by (a) merger or consolidation or (b) the purchase of (x) (i) all or substantially all of the assets of Tenant or (ii) a controlling interest in the stock or other equity interests of Tenant and (y) the business and goodwill of Tenant, provided that said person, corporation, partnership or other business entity which shall be Tenant following such merger, consolidation or asset purchase or Tenant following the transfer of stock (or other equity interests), as the case may be, (the “Proposed Assignee”) shall have a tangible net worth, as determined in accordance with generally accepted accounting principles consistently applied following the consummation of such transaction, at least equal to that of Tenant as of the date of this Lease (such required net worth, the “Required Net Worth”) and provided further that such Proposed Assignee shall continue to operate the same business conducted by Tenant in the Demised Premises immediately prior to the transaction and the interest of Tenant in this Lease is not the sole or principal asset of Tenant and such assignment shall be for a bone fide business purpose and shall not be intended to circumvent the restrictions on assignment set forth in this Lease. At the time of said proposed assignment (or if Legal Requirements prohibit such prior delivery within five (5) business days after the same shall first allow for such disclosure), Tenant shall deliver to Owner a reasonably detailed statement of the financial condition of the aforesaid Proposed Assignee, prepared in accordance with generally accepted accounting principles applied on a consistent basis, sworn to by an executive officer or principal or partner of Tenant and the Proposed Assignee, and certified without qualification by a firm of reputable independent certified public accountants which statement shall reflect the financial condition of the aforesaid proposed assignee at that time after taking into account the consummation of the assignment of this Lease and any other transactions related thereto. Notwithstanding anything contained in this Section to the contrary, such assignment shall not be valid if the Proposed Assignee shall not have a tangible net worth following the consummation of such transaction, consisting of assets and liabilities, at least equal to the Required Net Worth or the interest of Tenant in this Lease is the sole or principal asset of Tenant or such assignment is not made for a bona fide business purpose. Furthermore, no such assignment in connection with an asset sale shall be valid, unless, within ten (10) business days after the execution thereof, Tenant shall deliver to Owner (I) a duplicate original instrument of assignment in form and substance reasonably satisfactory to Owner duly executed by Tenant, acknowledged before a notary public, in which Tenant shall (a) waive all notices of default given to the assignee and all other notices of every kind or description, now or hereafter provided in this Lease, by statute or by rule of law; and (b) acknowledge that Tenant’s obligations with respect to this Lease shall not be discharged, released or impaired by (i) such assignment; (ii) any amendment or modification of this Lease (whether or not the obligations of the tenant under the Lease are increased thereby); (iii) any further assignment or transfer of the tenant’s interest in this Lease; (iv) any exercise, non- exercise or waiver by Owner of any right, remedy, power or privilege under or with respect to this Lease; (v) any waiver, consent, extension, indulgence or other act or omission with respect to any of the obligations of Tenant under this Lease; (vi) any act or thing which, but for the provisions of such assignment, might be deemed a legal or equitable
discharge of a surety or assignor, to all of which Tenant shall consent in advance; it being the purpose and intent of Owner and Tenant that the obligations of Tenant hereunder as assignor shall be absolute and unconditional under any and all circumstances; and (II) an instrument in form and substance reasonably satisfactory to Owner, duly executed by the Proposed Assignee, acknowledged before a notary public, in which such Proposed Assignee shall assume observance and performance of, and agree to be personally bound by, all of the terms, covenants and conditions of this Lease on Tenant’s part to be performed. In addition, no such assignment in connection with a merger, consolidation or sale of stock or other equity interests in Tenant shall be valid unless within ten (10) days after the consummation thereof, Tenant shall deliver to Owner (xx) a copy of the certificate of merger or consolidation which was filed in the relevant jurisdiction, in the event the assignment was in connection with a merger or consolidation, or (yy) a statement identifying the purchaser(s) of the stock or other equity interests in Tenant, in the event the assignment was in connection with a sale of the stock or other equity interests in Tenant. The provisions of Subsection C of Section 11.03 relating to assignment consideration shall not be applicable to any proposed assignment of this Lease made in accordance with the provisions of this Section 11.07. In the event of any dispute between Owner and Tenant as to the validity of any such assignment such dispute shall be determined by arbitration in the City of New York in accordance with the provisions of Section 36.01. Any such determination shall be final and binding upon the parties whether or not a judgment shall be entered in any court. If the determination of any such arbitration shall be adverse to Owner, Owner, nevertheless, shall not be liable to Tenant and Tenant’s sole remedy in such event shall be to have the proposed assignment deemed valid.

ARTICLE 12

EXISTING CONDITIONS/OWNER’S INITIAL WORK

Section 12.01. “As Is” but for Owner’s Initial Work: Tenant acknowledges that Owner has made no representations to Tenant with respect to the condition of the Demised Premises and Tenant agrees to accept possession of the Demised Premises with the temporary sprinkler loop located therein as of the date hereof “as is” and further agrees that Owner shall have no obligation to perform any work or make any installations in order to prepare the Demised Premises for Tenant’s occupancy except as otherwise provided in Section 12.02 to the contrary. The provisions of this Section 12.01 shall not vitiate any obligations of Owner pursuant to Section 3.06, Section 5.02 or Section 6.04 of this Lease.

Section 12.02. Owner’s Initial Work:

A. On or about the Commencement, Owner shall cause the following work to be done in the Demised Premises (referred to herein as “Owner’s Initial Work”):

1. Demolition: Owner shall demolish the “mock office installation” previously constructed by Owner in the Demised Premises, the installations in the elevator lobby portion of the Demised Premises and the ceiling tiles and lights in the twenty-second (22nd) floor freight elevator corridor. Firestopping/proofing as required by Legal Requirements in connection with this demolition work and Owner’s previous demolition work of installations in the Demised Premises shall also be Owner’s obligation.

2. Building Systems: Owner shall cause the Building’s Sprinkler Standpipe and any other base Building systems, including convectors, which service the Demised Premises to be in good working order.

3. Shell: Owner shall perform the work, if any, required to render all exterior windows, window frames, existing exit doors at points of egress from the Demised Premises to be in good working order. Any damaged convector covers/grills shall be repaired, or if necessary, in Owner’s reasonable opinion, replaced.

4. Legal Requirements: Owner shall perform the work, if any, such that (x) the Demised Premises is in compliance with Legal Requirements applicable to vacant, demolished, unoccupied space and (y) core doors at points of egress and the hardware and frames in connection therewith are in compliance with Legal Requirements and in good working order. Owner shall, to the extent required to comply with ADA, lower fire warden stations, pull boxes, and elevator call buttons.

5. Life Safety: Owner shall make available to Tenant a reasonable number of points of connection for a standard office installation to the base Building Class E fire alarm, sprinkler and life safety system installed in core areas of the Building.

6. Floors: Owner shall perform the work, if any, required such that the floors of the Demised Premises are patched as necessary so the same are ready to receive Tenant’s flooring.

7. Bathrooms: Owner shall construct one (1) men’s and one (1) women’s restroom therein and in addition to such restrooms, a unisex restroom that so complies with ADA, as shown on Exhibit 4 attached hereto and made part hereof. All such restrooms shall contain new...
In addition, Owner shall deliver an ACP-5 to Tenant in connection with Tenant’s Initial Installation as set forth in Section 3.06E.

B. Owner’s Initial Work required to be performed and made by Owner pursuant to the provisions of this Section 12.02 shall be equal to standards adopted by Owner for the Building and shall constitute a single, non-recurring obligation on the part of Owner and shall be completed on or about the Commencement Date. In the event this Lease is renewed or extended for a further term by agreement or operation of law, Owner’s obligation to perform such work shall not apply to such renewal or extension.

C. Owner may enter the Demised Premises to perform the foregoing work and installations, and entry by Owner, its agents, servants, employees or contractors for such purpose shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner, or its agents, by reason of inconvenience or annoyance to Tenant, or injury to, or interruption of Tenant’s business or otherwise. Owner agrees, however, to perform said work with reasonable diligence without any obligation, however, to employ contractors or labor at overtime or other premium pay rates.

D. Tenant acknowledges that Owner will be performing Owner’s Initial Work subsequent to the Commencement Date. Owner and Tenant, upon request of the other party, shall apprise such other party of such respective party’s general construction schedule so the parties can coordinate the performance of those items of Owner’s Initial Work remaining and the performance of Tenant’s Initial Installation in accordance with good construction practice. The parties shall reasonably cooperate such that Owner’s Initial Work and Tenant’s Initial Installation may be completed efficiently and economically. Owner’s Initial Work shall be performed with reasonable diligence, in a manner so as not to delay Tenant’s performance of Tenant’s Initial Installation or Tenant’s occupancy after the completion thereof, subject to good construction practice and without any obligation to employ contractors or labor at overtime or other premium pay rates. In the event that the performance after the Commencement Date of Owner’s Initial Work delays the substantial completion of Tenant’s Initial Installation or delays Tenant from actually occupying the Demised Premises for the conduct of business after the completion of Tenant’s Initial Installation (and in either event, based on good construction practice, Owner could reasonably have been expected to have avoided such delay), then as Tenant’s sole remedy, the duration of the Rent Holiday Period shall be increased one (1) day for each day that Owner, by its performance of, or failure to perform, Owner’s Initial Work, is causing such delay. The foregoing notwithstanding, Tenant shall not be entitled to an extension of the Rent Holiday Period pursuant to this Section 12.02D with respect to any (i) days of delay caused by any acts or omissions of Tenant which, based upon good construction practice, could be reasonably expected to have caused a delay, or (ii) days of delay occasioned by reason of any Force Majeure Event (as defined herein). In addition, in no event shall the Rent Holiday Period be extended for more than one (1) day on account of any one (1) day of delay regardless of whether stemming from one or more reasons for such delay to Tenant.

ARTICLE 13

ACCESS TO DEMISED PREMISES

Section 13.01. Owner’s Right to Enter: Owner and its agents shall have the following rights in and about the Demised Premises: (i) to enter the Demised Premises at all times to examine the Demised Premises or for any of the purposes set forth in this Article or for the purpose of performing any obligation of Owner under this Lease or exercising any right or remedy reserved to Owner in this Lease, or complying with any Legal Requirement which Owner is obligated to comply with hereunder, and if Tenant, its officers, partners, agents or employees shall not be personally present or shall not open and permit an entry into the Demised Premises at any time when such entry shall be necessary or permissible, to use a master key or to forcibly enter the Demised Premises; (ii) to erect, install, use and maintain pipes, ducts and conduits in and through the Demised Premises; (iii) to exhibit the Demised Premises to others; (iv) to make such decorations, repairs, alterations, improvements or additions, or to perform such maintenance, including, but not limited to, the maintenance of all heating, air conditioning, ventilating, elevator, plumbing, electrical, telecommunication and other mechanical facilities, as Owner may deem necessary or desirable; (v) to take, on an as-needed basis, all materials into and upon the Demised Premises that may be required in connection with any such decorations, repairs, alterations, improvements, additions or maintenance; and (vi) to alter, renovate and decorate the Demised Premises at any time during the Demised Term if Tenant shall have removed all or substantially all of Tenant’s property from the Demised Premises. The lessors under any Superior Lease and the holders of any Mortgage shall have the right to enter the Demised Premises from time to time through their respective employees, agents, representatives and architects to inspect the same or to cure any default of Owner or Tenant relating thereto. Owner shall have the right, from time to time, to change the name, number or designation by which the Building is commonly known which right shall include, without limitation, the right to name the Building after any tenant of the Building. Tenant acknowledges that Owner has advised Tenant that the Building is currently named for the tenant under the so-called “Publicis” lease. Owner shall repair any damage to the Demised Premises caused by Owner or its contractor during the performance of any such entry or work referred to in this Section 13.01, provided, however, in the event that such damage occurs in connection with a casualty, Owner’s liability under this sentence shall be subject to the provisions of Article 9 and the so-called “waiver of subrogation” provisions referred to therein.

Section 13.02. Owner’s Reservation of Rights to Portions of the Building: All parts (except surfaces facing the interior of the Demised Premises) of all walls, windows and doors bounding the Demised Premises (including exterior Building walls, core corridor walls, doors and entrances), all balconies, terraces and roofs adjacent to the Demised Premises, all space in or adjacent to the Demised Premises used for shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, heating, air conditioning, ventilating, plumbing, electrical, telecommunication and other mechanical facilities, closets, service closets and other Building facilities, and the use thereof, as well as access thereto fixtures, tiling, partitions and equipment, as described on Exhibit 5.
through the Demised Premises for the purposes of operation, maintenance, alteration and repair, are hereby reserved to Owner. Owner also reserves the right at any time to change the arrangement or location of entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets and other public parts of the Building, provided any such change does not permanently and unreasonably obstruct Tenant’s access to, and use of, the Demised Premises, other than to a de minimis extent. Nothing contained in this Article shall impose any obligation upon Owner with respect to the operation, maintenance, alteration or repair of the Demised Premises or the Building.

Section 13.03. Access to Third Parties: Owner and its agents shall have the right to permit access to the Demised Premises, whether or not Tenant shall be present, to any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, any property of Tenant or any other occupant of the Demised Premises, or for any other lawful purpose, or by any representative of the fire, police, building, sanitation or other department of the City, State or Federal Governments. Neither anything contained in this Section, nor any action taken by Owner under this Section, shall be deemed to constitute recognition by Owner that any person other than Tenant has any right or interest in this Lease or the Demised Premises.

Section 13.04. No Actual or Constructive Eviction: The exercise by Owner or its agents or by the lessor under any Superior Lease or by the holder of any Mortgage of any right reserved to Owner in this Article shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner, or its agents, or upon any lessor under any Superior Lease or upon the holder of any Mortgage, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business, or otherwise.

Section 13.05. Owner’s Entry on Notice: A. Supplementing the provisions of Section 13.01 and 13.02, Owner agrees that except in cases of emergency, any entry upon the Demised Premises pursuant to the provisions of said Sections shall be made at reasonable times, and only after reasonable advance notice (which may be oral, mailed, delivered or left at the Demised Premises notwithstanding any contrary provisions of Article 27) and any work performed or installation made pursuant to said Section shall be made with reasonable diligence and any such entry, work or installations shall be made in a manner designed to minimize interference with Tenant’s normal business operations (however, nothing contained in this Section shall be deemed to impose upon Owner any obligation to employ contractors or labor at so-called overtime or other premium pay rates).

B. In the event that Tenant shall, during the Demised Term, give Owner a notice, indicating a desire to designate a minor portion of the Demised Premises to be used by Tenant for the storage of confidential documents as a secured area (such area so designated, the “Security Area”), then in such event, Owner shall not unreasonably withhold consent to such designation. Once a Security Area is agreed upon, Owner and Owner’s agents shall not exercise any right to enter the Security Area unless accompanied by an employee of Tenant, provided that Tenant shall make an employee available to accompany Owner or its agents during such entry at any time during Tenant’s normal business hours, and at other times upon reasonable advance notice by Owner to Tenant (which notice may be oral, delivered or left at the Demised Premises, notwithstanding anything contained in Article 27 to the contrary). Notwithstanding the foregoing, in the event of an emergency that requires Owner to enter such Security Area, Tenant shall have the right to enter into such Security Area, without being accompanied by such Tenant or Tenant’s representative. Owner shall have no liability to Tenant for any failure of Owner to perform any of its obligations under this Lease by reason of Owner’s inability to enter into the Security Area. Tenant shall indemnify Owner against, and hold Owner harmless from, any claim, loss, liability, damage, cost and expense, including, without limitation, reasonable attorney’s fees and disbursements, incurred by Owner by reason of the limitation of Owner’s access thereto.

Section 13.06. Concealing Pipes and Ducts: Further supplementing the provisions of Section 13.01, Owner agrees that any pipes, ducts or conduits installed in or through the Demised Premises during the Demised Term pursuant to the provisions of said Section, shall either be concealed behind, beneath or within partitioning, columns, hung ceilings to the extent the Demised Premises contains hung ceilings, or floors, or completely furred at points immediately adjacent to partitioning, columns or ceilings, and that when the installation of such pipes, ducts or conduits shall be completed, such pipes, ducts or conduits shall not materially reduce the usable area of the Demised Premises.

ARTICLE 14

VAULT SPACE

Section 14.01. The Demised Premises do not contain any vaults, vault space or other space outside the boundaries of the Real Property, notwithstanding anything contained in this Lease or indicated on any sketch, blueprint or plan. Owner makes no representation as to the location of the boundaries of the Real Property. All vaults and vault space and all other space outside the boundaries of the Real Property which Tenant may be permitted to use or occupy are to be used or occupied under a revocable license, and if any such license shall be revoked, or if the amount of such space shall be diminished or required by any Federal, State or Municipal Authority or by any public utility company, such revocation, diminution or requisition shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner. Any fee, tax or charge imposed by any government authority for any such vault, vault space or other space shall be paid by Tenant.

ARTICLE 15

CERTIFICATE OF OCCUPANCY
ARTICLE 16

DEFAULT

Section 16.01. **Events of Default**: Upon the occurrence, at any time prior to or during the Demised Term, of any one or more of the following events (referred to herein, singly, as an “Event of Default” and collectively as “Events of Default”):

(a) if Tenant shall default in the payment when due of any installment of Fixed Rent or any increase in the Fixed Rent or in the payment when due of any additional rent and such default shall continue for a period of ten (10) days after notice by Owner to Tenant of such default; or

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant’s part to be observed or performed (other than the covenants for the payment of Fixed Rent, any increase in the Fixed Rent and additional rent) and Tenant shall fail to remedy such default within thirty (30) days after notice by Owner to Tenant of such default, or if such default is of such a nature that it cannot be completely remedied within said period of thirty (30) days and Tenant shall not commence, promptly after receipt of such notice, or shall not thereafter diligently prosecute to completion, all steps necessary to remedy such default; or

(c) if Tenant shall file a voluntary petition in bankruptcy or insolvency, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall make an assignment for the benefit of creditors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any part of Tenant’s property; or

(d) if, within ninety (90) days after the commencement of any proceeding against Tenant, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of Tenant, or of all or any part of Tenant’s property, without the consent or acquiescence of Tenant, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against Tenant or any of Tenant’s property pursuant to which the Demised Premises shall be taken or occupied or attempted to be taken or occupied; or

(e) if Tenant shall default in the observance or performance of any term, covenant or condition on Tenant’s part to be observed or performed under any other lease with Owner of space in the Building or under any other lease of space in a Rudin Building (as defined in Section 31.01), and such default shall continue beyond any grace period set forth in such other lease for the remedying of such default; or

(f) if the Demised Premises shall become abandoned; or

(g) if (i) Tenant’s interest in this Lease shall devolve upon or pass to any person, whether by operation of law or otherwise, or (ii) there shall be any sale, pledge, transfer or other alienation described in Section 11.01 of this Lease which is deemed an assignment of this Lease for purposes of said Section 11.01, except as expressly permitted under Article 11; or

(h) any transfer of all or any substantial portion of the assets of Tenant, or the incurrence of a material obligation by Tenant other than in the ordinary course of business, which in either event would impair Tenant’s ability to comply with its obligations under this Lease, unless such transfer or obligation is undertaken or incurred in good faith for equivalent consideration;

then, during such time as such Event(s) of Default is/are continuing (whether prior to or during the Demised Term), Owner may at any time, at Owner’s option, give to Tenant a five (5) days’ notice of termination of this Lease and, in the event such notice is given, this Lease and the Demised Term shall come to an end and expire (whether or not said term shall have commenced) upon the expiration of said five (5) days with the same effect as if the date of expiration of said five (5) days were the Expiration Date, but Tenant shall remain liable for damages and all other sums payable pursuant to the provisions of Article 18.

Section 16.02. **“Tenant”/Moneys Received**: If, at any time (i) Tenant shall be comprised of two
(2) or more persons, or (ii) Tenant’s obligations under this Lease shall have been guaranteed by any person other than Tenant, or (iii) Tenant’s interest in this Lease shall have been assigned, the word “Tenant”, as used in Subsections (c) and (d) of Section 16.01, shall be deemed to mean any one or more of the persons primarily or secondarily liable for Tenant’s obligations under this Lease. Any monies received by Owner from or on behalf of Tenant during the pendency of any proceeding of the types referred to in said Subsections (c) and (d) shall be deemed paid as compensation for the use and occupation of the Demised Premises and the acceptance of any such compensation by Owner shall not be deemed an acceptance of rent or a waiver on the part of Owner of any rights under Section 16.01.

ARTICLE 17

REMEDIES

Section 17.01. Owner’s Right of Re-Entry and Right to Relet: If Tenant shall default in the payment when due of any installment of Fixed Rent or in the payment when due of any increase in the Fixed Rent or any additional rent after the notice and expiration of the applicable cure period forth in this Lease, or if this Lease and the Demised Term shall expire and come to an end as provided in Article 16:

(a) Owner and its agents and servants may immediately, or at any time after such default or after the date upon which this Lease and the Demised Term shall expire and come to an end, re-enter the Demised Premises or any part thereof, without notice, either by summary proceedings or by any other applicable action or proceeding, or by force or otherwise (without being liable to indictment, prosecution or damages therefor), and may repossess the Demised Premises and dispossess Tenant and any other persons from the Demised Premises and remove any and all of their property and effects from the Demised Premises; and

(b) Owner, at Owner’s option, may relet the whole or any part or parts of the Demised Premises, from time to time, either in the name of Owner or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Owner, in its sole discretion, may determine. Owner shall have no obligation to relet the Demised Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Demised Premises or any part thereof; or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise to affect any such liability; Owner, at Owner’s option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Demised Premises as Owner, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

Section 17.02. Waiver of Right to Redeem, etc.: Tenant hereby waives the service of any notice of intention to re-enter or to institute legal proceedings to that end which may otherwise be required to be given under any present or future law. Tenant, on its own behalf and on behalf of all persons claiming through or under Tenant, including all creditors, does further hereby waive any and all rights which Tenant and all such persons might otherwise have under any present or future law to redeem the Demised Premises, or to re-enter or repossess the Demised Premises, or to restore the operation of this Lease, after (i) Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or (ii) any re-entry by Owner, or (iii) any expiration or termination of this Lease and the Demised Term, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words “re-enter”, “re-entry” and “re-entered” as used in this Lease shall not be deemed to be restricted to their technical legal meanings. In the event of a breach or threatened breach by Tenant, or any persons claiming through or under Tenant, of any term, covenant or condition of this Lease on Tenant’s part to be observed or performed, Owner shall have the right to enjoin such breach and the right to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The right to invoke the remedies hereinbefore set forth in this Lease is cumulative and shall not preclude Owner from invoking any other remedy allowed by law or in equity.

ARTICLE 18

DAMAGES

Section 18.01. Amount of Owner’s Damages: If this Lease and the Demised Term shall expire and come to an end as provided in Article 16, or by or under any summary proceeding or any other action or proceeding, or if Owner shall re-enter the Demised Premises as provided in Article 17, or by or under any summary proceeding or any other action or proceeding, then, in any of said events:

(a) Tenant shall pay to Owner all Fixed Rent, additional rent and other charges payable under this Lease by Tenant to Owner to the date upon which this Lease and the Demised Term shall have expired and come to an end or to the date of re-entry upon the Demised Premises by Owner, as the case may be; and

(b) Tenant shall also be liable for and shall pay to Owner, as damages, any deficiency (referred to as a “Deficiency”) between the Fixed Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Demised Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 17.01 for any
part of such period (first deducting from the rents collected under any such reletting all of Owner’s expenses in connection with the termination of this Lease or Owner’s re-entry upon the Demised Premises and with such reletting including, but not limited to, all repossession costs, brokerage commissions, legal expenses, attorneys’ fees, alteration costs and other expenses of preparing the Demised Premises for such reletting). Any such Deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for payment of installments of Fixed Rent, Owner shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise, and no suit to collect the amount of the Deficiency for any month shall prejudice Owner’s right to collect the Deficiency for any subsequent month by a similar proceeding. Solely for the purposes of this Subsection (b), the term “Fixed Rent” shall mean the Fixed Rent in effect immediately prior to the date upon which this Lease and the Demised Term shall have expired and come to an end, or the date of re-entry upon the Demised Premises by Owner, as the case may be, adjusted, from time to time, to reflect any increases which would have been payable pursuant to any of the provisions of this Lease including, but not limited to, the provisions of Article 23 of this Lease if the term hereof had not been terminated; and

(c) At any time after the Demised Term shall have expired and come to an end or Owner shall have re-entered upon the Demised Premises, as the case may be, whether or not Owner shall have collected any monthly Deficiencies as aforesaid, Owner shall be entitled to recover from Tenant, and Tenant shall pay to Owner, on demand, as and for liquidated and agreed final damages, a sum equal to the amount by which the Fixed Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Demised Term exceeds the then fair and reasonable rental value of the Demised Premises for the same period, both discounted to present worth at the rate of four (4%) percent per annum. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Demised Premises, or any part thereof, shall have been relet by Owner for the period which otherwise would have constituted the unexpired portion of the Demised Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Demised Premises so relet during the term of the reletting. Solely for the purposes of this Subsection (c), the term “Fixed Rent” shall mean the Fixed Rent in effect immediately prior to the date upon which this Lease and the Demised Term shall have expired and come to an end, or the date of re-entry upon the Demised Premises by Owner, as the case may be, adjusted to reflect any increases pursuant to the provisions of Article 23 for the Escalation Year and Tax Escalation Year immediately preceding such event.

Section 18.02. Rents Under Reletting: If the Demised Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Article 18. Tenant shall in no event be entitled to any rents collected or payable under any reletting, whether or not such rents shall exceed the Fixed Rent reserved in this Lease. Nothing contained in Articles 16, 17 or this Article shall be deemed to limit or preclude the recovery by Owner from Tenant of the maximum amount allowed to be obtained as damages by any statute or rule of law, or of any sums or damages to which Owner may be entitled in addition to the damages set forth in Section 18.01.

ARTICLE 19

FEES AND EXPENSES: INDEMNITY

Section 19.01. Owner’s Right to Cure Tenant’s Default: If Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant’s part to be observed or performed, Owner, at any time thereafter and without notice in cases of emergency or otherwise after the expiration of the applicable notice and grace period set forth in this Lease, may remedy such default for Tenant’s account and at Tenant’s expense, without thereby waiving any other rights or remedies of Owner with respect to such default.

Section 19.02. Tenant’s Indemnity and Liability Insurance Obligations: A. Tenant agrees to indemnify and save Owner and “Owner’s Indemnities” (as hereinafter defined) harmless of and from all loss, cost, liability, damage and expense including, but not limited to, reasonable counsel fees, penalties and fines, incurred in connection with or arising from (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed, or (ii) the breach or failure of any representation or warranty made by Tenant in this Lease, or (iii) the use or occupancy or manner of use or occupancy of the Demised Premises by Tenant or any person claiming through or under Tenant, or (iv) any acts, omissions or negligence of Tenant or any such person, or the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person, in or about the Demised Premises or the Building either prior to, during, or after the expiration of, the Demised Term, including, but not limited to, any acts omissions or negligence in the making or performing of any Alterations. Tenant further agrees to indemnify and save harmless Owner and Owner’s Indemnities of and from all loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees and disbursements, incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any use, occupancy, act, omission or negligence referred to in the preceding sentence. “Owner’s Indemnities” shall mean the Owner, the shareholders, members, or the partners comprising Owner and its and their partners, members, shareholders, officers, directors, employees, agents (including without limitation, any leasing and managing agents) and contractors together with the lessor under any Superior Lease and the holder of any Mortgage. If any action or proceeding shall be brought against Owner or Owner’s Indemnities based upon any such claim and if Tenant, upon notice from Owner, shall cause such action or proceeding to be defended at Tenant’s expense by counsel acting for Tenant’s insurance carriers in connection with such defense or by other counsel reasonably satisfactory to Owner, without any disclaimer of liability by Tenant or such insurance carriers in connection with such claim, Tenant shall not be required to indemnify Owner and Owner’s Indemnities for counsel fees in connection with such action or proceeding.
B. Throughout the Demised Term Tenant shall maintain commercial general liability insurance against any claims by reason of bodily and personal injury, death and property damage (including water damage) occurring in or about the Demised Premises covering, without limitation, the operation of any private air conditioning equipment and any private elevators, escalators or conveyors in or serving the Demised Premises or any part thereof, whether installed by Owner, Tenant or others, and shall furnish to Owner duplicate original policies of such insurance (or certificate thereof reasonably acceptable to Owner) prior to Tenant picking up the keys to the Demised Premises and at least ten (10) days prior to the expiration of the term of any such policy previously furnished by Tenant, in which policies Owner, and Owner’s Indemnities shall be named as parties insured, which policies shall be issued by companies, and shall be in form and amounts, satisfactory to Owner. Tenant’s insurance coverage shall provide, inter alia, that it is primary and non-contributory.

Section 19.03. Payments: Tenant shall pay to Owner, within thirty (30) days next following rendition by Owner to Tenant of bills or statements therefor: (i) sums equal to all expenditures made and monetary obligations incurred by Owner including, but not limited to, expenditures made and obligations incurred for reasonable counsel fees and disbursements, in connection with the remedying by Owner, for Tenant’s account pursuant to the provisions of Section 19.01, of any default of Tenant, and (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Section 19.02, and (iii) sums equal to all expenditures made and monetary obligations incurred by Owner including, but not limited to, expenditures made and obligations incurred for reasonable counsel fees and disbursements, in collecting or attempting to collect the Fixed Rent, any additional rent or any other sum of money accruing under this Lease or in enforcing or attempting to enforce any rights of Owner under this Lease or pursuant to law, whether by the institution and prosecution of summary proceedings or otherwise; and (iv) all other sums of money (other than Fixed Rent) accruing from Tenant to Owner pursuant to any provision of this Lease whether prior to or after the Commencement Date, may, at Owner’s option, be deemed additional rent, and Owner shall have the same remedies for Tenant’s failure to pay any item of additional rent when due as for Tenant’s failure to pay any installment of Fixed Rent when due. Tenant’s obligations under this Article shall survive the expiration or sooner termination of the Demised Term.

Section 19.04. Tenant’s Late Payments - Late Charges: If Tenant shall fail to make payment of any installment of Fixed Rent or any increase in the Fixed Rent or any additional rent within ten (10) days after the date when such payment is due, Tenant shall pay to Owner, in addition to such installment of Fixed Rent or such increase in the Fixed Rent or such additional rent, as the case may be, as a late charge and as additional rent, a sum equal to three (3%) percent per annum above the then current prime rate (as the term “prime rate” is defined in Section 31.03) charged by JPMorgan Chase Bank or its successor of the amount, as such rate is in effect on the date such unpaid amounts were due, computed from the date such payment was due to and including the date of payment.

Section 19.05. No Consequential Damages: Notwithstanding anything to the contrary in this Lease, except as set forth in the immediately following sentence, in any case in which Owner or Tenant is liable in damages to the other by reason of breach of this Lease, such damages shall consist solely of direct damages and in no event shall either party be liable to the other for consequential damages or special or indirect damages. The foregoing limitation on damages shall not apply to the liability of Tenant arising from a breach by Tenant of Article 21 of this Lease which continues for more than sixty (60) days.

Section 19.06 Owner’s Indemnity: Owner agrees to indemnify and save Tenant, and Tenant’s officers, directors, and employees ("Tenant’s Indemnities") harmless of and from all loss, cost, liability, damage and reasonable expense including, but not limited to, reasonable counsel fees, penalties and fines incurred in connection with or arising from (i) any default by Owner in the observance or performance of any terms, covenants or conditions to be observed or performed by Owner hereunder, or (ii) any wrongful act or wrongful omission or negligence of Owner or its employees, agents, contractors or servants in or about the Demised Premises or the Building during the Demised Term. Owner further agrees to indemnify and save harmless Tenant and Tenant’s Indemnities of and from all loss, cost, liability, damage, and expense, including, but not limited to, reasonable counsel fees and disbursements incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any wrongful act or wrongful omission referred to in the preceding sentence. Owner shall not be required to indemnify Tenant’s Indemnities, and hold Tenant’s Indemnities harmless, in either case as aforesaid, to the extent that it is finally determined that the negligence or willful misconduct of a Tenant Indemnitee contributed to the loss or damage in question. If any action or proceeding shall be brought against Tenant or Tenant’s Indemnities based upon any such claim and if Owner, upon notice from Tenant, shall cause such action or proceeding to be defended at Owner’s expense by counsel acting for Owner’s insurance carriers in connection with such defense or by other counsel reasonably satisfactory to Tenant, without any disclaimer of liability by Owner or such insurance carriers in connection with such claim, Owner shall not be required to indemnify Tenant or Tenant’s Indemnities for counsel fees in connection with such action or proceeding. Nothing contained in this Section 19.06 shall limit, modify or vitiate the terms and conditions of Section 9.04 of this Lease, to which Section this Section shall be subject.

ARTICLE 20

ENTIRE AGREEMENT

Section 20.01. Entire Agreement: This Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Lease. Neither Owner nor Owner’s agents have made any representations or warranties with respect to the Demised Premises, the Building, the Real Property or this Lease except as expressly set forth in this Lease and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease. This Lease may not be changed, modified or discharged, in whole or in part, orally and no executory agreement shall be effective to change, modify or discharge, in whole or in part, this Lease or any provisions of this Lease, unless such agreement is set forth in a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought. All references in this Lease to the consent or
approval of Owner shall be deemed to mean the written consent of Owner, or the written approval of Owner, as the case may be, and no consent or approval of Owner shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by Owner.

ARTICLE 21

END OF TERM

Section 21.01.  End of Term:  On the date upon which the Demised Term shall expire and come to an end, whether pursuant to any of the provisions of this Lease or by operation of law, and whether on or prior to the Expiration Date, Tenant, at Tenant’s sole cost and expense, (i) shall quit and surrender the Demised Premises to Owner, broom clean and in good order and condition consistent with Tenant’s obligations under Section 5.01 of this Lease, ordinary wear and damage caused by casualty or condemnation excepted, and (ii) shall remove all of Tenant’s Personal Property and all other property and effects of Tenant and all persons claiming through or under Tenant (including, but not limited to, removal of all vertical wiring whether within or outside the Demised Premises regardless of at whose expense the vertical wiring was installed except as otherwise provided in Section 21.02) from the Demised Premises and the Building, and (iii) shall repair all damage to the Demised Premises occasioned by such removal: and (iv) shall, at Owner’s election (but subject to the provisions of Section 3.01W), exercisable no less than six (6) months prior to the expiration or two (2) months after the earlier termination of the Demised Term, remove any Specialty Alterations (as defined herein) including, without limitation, private interior staircases in the Demised Premises or connecting the Demised Premises or any part thereof with any other space (referred to herein as the “Other Space”) in the Building occupied by Tenant, and repair any material damage to those portions of the Demised Premises, the Other Space and the Building affected by any such Specialty Alterations (including, but not limited to, the slapping over of any openings). Notwithstanding the provisions of subdivision (iv) of the foregoing sentence, in the event Owner does not elect to have removed any such staircase or other Specialty Alteration referred to therein (or in the event that Owner does not have the right to require the same as set forth in Section 3.01W), any such staircase or other Specialty Alteration shall be and remain the property of Owner at no cost or expense to Owner. Owner shall have the right to retain any property and effects which shall remain in the Demised Premises after the expiration or sooner termination of the Demised Term, and any net proceeds from the sale thereof, without waiving Owner’s rights with respect to any default by Tenant under the foregoing provisions of this Section. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules of any successor law of like import then in force, in connection with any holdover summary proceedings which Owner may institute to enforce the foregoing provisions of this Article. Even if said date upon which the Demised Term shall expire and come to an end shall fall on a Sunday or holiday, then Tenant’s obligations under the first sentence of this Section shall nonetheless still be performed on or prior such date. For purposes of this Section 21.01, the term “Specialty Alterations” shall mean, if and to the extent installed by Tenant, any supplemental HVAC units, kitchens, private interior staircases, executive or private bathrooms, raised computer floors, vaults, any steel plates or reinforcement (including without limitation, in connection with libraries or file systems), dumbwaiters, pneumatic tubes, horizontal transportation systems, and any other work or installations of a similar character to those enumerated in this sentence, and any equipment dedicated for Tenant’s use outside of the Demised Premises. In no event shall any aspect of Owner’s Initial Work be deemed a Specialty Alteration. Tenant’s obligations under this Section shall survive the expiration or sooner termination of the Demised Term.

Section 21.02.  Notwithstanding anything to the contrary set forth in Section 21.01, Owner, at Owner’s option, exercised by notice given (a) at least 30 days prior to the Expiration Date, or (b) on or prior to any sooner termination of the Demised Term, may require Tenant to leave all wiring referred to in Section 21.01 in place, in which event all such wiring shall remain in the Demised Premises and the Building and become the property of Owner, at no cost and expense to Owner.

Section 21.03.  Notwithstanding anything to the contrary set forth in this Lease, including, but not limited to, Section 21.01, Owner shall itself have the right at its election to remove any of the stairs and any other Specialty Alterations (except as otherwise set forth in Section 3.01W), in which event all reasonable out of pocket expenses incurred by Owner in connection therewith shall be reimbursed by Tenant upon demand of Owner. Reasonable substantiation for such costs shall be furnished to Tenant upon request.

Section 21.04.  Holdover:  There shall be no holding over by Tenant after the expiration or earlier termination of this Lease and the failure by Tenant to deliver possession of the Demised Premises to Owner in accordance with this Lease shall be an unlawful holdover. If possession of the Demised Premises shall not be surrendered to Owner in accordance with the terms and conditions of this Lease on or before the Expiration Date or earlier termination of this Lease, then in addition to any other rights or remedies Owner may have under the Lease or at law or in equity, including, without limitation, to obtain possession of the Demised Premises by summary proceeding or other lawful action or remedy and/or to recover damages from Tenant’s holdover, but subject to the terms of Section 19.05 of this Lease, Owner shall be entitled to, in order to compensate Owner for Tenant’s holdover use and occupancy of the Demised Premises, but not as rent, use and occupancy charges. Owner and Tenant agree that (x) with respect to the first (2) months in which Tenant holds over for any days in any such month, the use and occupancy charge for each such month shall be a sum equal to one-hundred fifty percent (150%) of the monthly Fixed Rent and increases therein pursuant to Article 23 for the last month before the Expiration Date (plus charges that would have accrued under Article 29 if the Lease had remained in effect) and (y) with respect to any month thereafter in which Tenant holds over for any days, the use and occupancy charge for such month shall be a sum equal to two hundred percent (200%) of the monthly Fixed Rent and increases therein pursuant to Article 23 for the last month before the Expiration Date (plus charges that would have accrued under Article 29 if the Lease had remained in effect). Such payment shall be made on the first day of each month after the expiration or sooner termination of this Lease whether or not Tenant anticipates vacating the Demised Premises in such calendar month. Owner waives no rights against Tenant by reason of accepting any holding over by Tenant. The provisions of this Section 21.04 shall not in any way be deemed to (i) permit Tenant to remain in possession of the
Demised Premises after the Expiration Date or sooner termination of this Lease, or (ii) imply any right of Tenant to use or occupy the Demised Premises upon expiration or termination of this Lease and the Demised Term, and no acceptance by Owner of payments from Tenant after the Expiration Date or sooner termination of the Demised Term shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Section 21.04.

Section 21.05. Tenant’s obligations under this Article shall survive the expiration or sooner termination of the Demised Term.

ARTICLE 22

QUIET ENJOYMENT

Section 22.01. Quiet Enjoyment: Owner covenants and agrees with Tenant that so long as this Lease is in full force and effect, Tenant may peaceably and quietly enjoy the Demised Premises during the Demised Term, subject, however, to the terms, covenants and conditions of this Lease including, but not limited to, the provisions of Section 37.01, and subject to the Superior Lease and the Mortgage referred to in Section 7.01.

ARTICLE 23

TAX AND OPERATING PAYMENTS

Section 23.01. Definitions: In the determination of any increase in the Fixed Rent under the provisions of this Article, Owner and Tenant agree that the following terms shall have the following meanings:

A. The term “Tax Escalation Year” shall mean each fiscal year commencing July 1st and ending on the following June 30th which shall include any part of the Demised Term.

B. The term “Escalation Year” shall mean each calendar year which shall include any part of the Demised Term.

C. The term “Taxes” shall be deemed to mean a sum equal to the aggregate of: (i) the product determined by multiplying (a) the then applicable full New York City real estate tax rate in effect with respect to the Borough of Manhattan by (b) the then applicable assessed valuation of the Real Property, without giving effect, in either the fiscal tax year beginning on July 1, 2016 and ending on June 30, 2017 (i.e., the fiscal year used to determine Owner’s Basic Tax Liability) or in any Tax Escalation Year, to any tax reduction, abatement or exemption programs, plus (ii) amounts assessed and payable by Owner by any business improvement district in which the Real Property is located plus (iii) any other assessments, special or otherwise, upon or with respect to the Real Property imposed by the City or County of New York or any other taxing authority. If by law, any assessment of Taxes may be divided and paid in annual installments, then, for the purposes of this Article and calculating Tenant’s obligations on account of Taxes, (I) such assessment shall be deemed to have been so divided, (II) such assessment shall be deemed payable in the maximum number of annual installments permitted by law, and (III) there shall be deemed included in Taxes for each Tax Escalation Year the annual installment of such assessment becoming a lien during such Tax Escalation Year, together with interest payable during such Tax Escalation Year on such annual installment and on all installments thereafter becoming due as provided by law, all as if such assessment had been so divided. If, due to any change in the method of taxation, any franchise, income, profit, sales, rental, use and occupancy or other tax or payments in lieu of any such taxes shall be substituted for, or levied against Owner or any owner of the Building or the Real Property, in lieu of any real estate taxes or assessments upon or with respect to the Real Property, such tax or payments in lieu of any such taxes shall be included in the term Taxes for the purposes of this Article. Except as expressly provided in the immediately preceding sentence and notwithstanding any other provisions of this Lease to the contrary, Taxes shall not include (i) any taxes on Owner’s income, (ii) any franchise taxes, (iii) any estate, gift, transfer, sales or inheritance taxes, (iv) mortgage recording or capital gains taxes, (v) any increase in Taxes resulting from physically adding space to the Building, (vi) Taxes assessed on signage located on the Building, or (vii) any interest or penalties incurred by Owner, any lessor under a Superior Lease or the holder of a Mortgage as a result of Owner’s or such lessor’s or holder’s late payment of Taxes

D. The term “Owner’s Basic Tax Liability” shall mean a sum equal to Taxes payable for the fiscal tax year beginning on July 1, 2016 and ending on June 30, 2017.

E. The term “Demised Premises Area” shall mean 24,195 and the term “Building Area” shall mean 856,032.

F. The term “Tenant’s Proportionate Share” shall mean the fraction, the denominator of which is the Building Area and the numerator of which is the Demised Premises Area, which Owner and Tenant agree is, with respect to the Demised Premises set forth in Section 1.02 of this Lease, 2.825%.

G. The term “Base Operating Expenses” shall mean a sum equal to Operating Expenses for the calendar year 2016 (which calendar year is sometimes referred to as the “Base Escalation Year”).

H. (1) The term “Operating Expenses” shall, subject to the provisions of Paragraph (2) of this Subsection 23.01.H, mean the aggregate
cost and expense incurred by Owner in the operation, maintenance, management and security of the Real Property and the Building and any plazas, sidewalks and curbs adjacent thereto including, without limitation, but without duplication, the cost and expense of the following:

(a) salaries, wages, medical, surgical and general welfare and other so-called “fringe” benefits (including group insurance and retirement benefits) for employees (including, but not limited to, employees who provide twenty four (24) hour services, seven (7) days per week throughout the year) of Owner or any contractor of Owner engaged in the cleaning, operation, maintenance or management of the Real Property, or engaged for security purposes and/or for receiving or transmitting deliveries to and from the Building, and payroll taxes and workmen’s compensation insurance premiums relating thereto,

(b) gas, steam, water and sewer rental,

(c) all electrical costs incurred in the operation of the Building which do not relate to tenantable space in the Building,

(d) utility taxes,

(e) rubbish removal,

(f) fire, casualty, liability, rent and other insurance carried by Owner,

(g) repairs, repainting, replacement, maintenance of grounds, and Included Improvements (as provided in Paragraph (2) of this Subsection 23.01.H),

(h) Building supplies,

(i) uniforms and cleaning thereof,

(j) snow removal,

(k) window cleaning,

(l) service contracts with independent contractors for any of the foregoing (including, but not limited to, elevator, heating, air conditioning, ventilating, sprinkler system, fire alarm and telecommunication equipment maintenance),

(m) management fees (whether or not paid to any person, firm or corporation having an interest in or under common ownership with Owner or any of the persons, firms or corporations comprising Owner, or to any firm or corporation in which any partner of Owner has an interest) in the amount of one ($1.00) dollar per rentable square foot of the Building Area in the Base Escalation Year (which for the purposes of this subsection (m) shall be deemed to be 856,032 rentable square feet) which amount for management fees shall increase in each Escalation Year subsequent to the Base Escalation Year by the same percentage of increase as the percentage of increase in the aggregate of all other Operating Expenses,

(n) legal fees and disbursements and other expenses (excluding, however, legal fees and expenses incurred in connection with any application or proceeding brought for reduction of the assessed valuation of the Real Property or any part thereof and any legal fees specifically excluded pursuant to Section 23.01H(2),

(o) auditing fees,

(p) advertising and promotion expenses,

(q) all costs of compliance under the provisions of any present or future Superior Lease other than the payment of rental and impositions thereunder and increases in the basic rent under such Leases as a result of adjustments in such basic rent, and

(r) all other costs and expenses incurred in connection with the operation, maintenance, management and security of the Real Property and the Building, and any plazas, sidewalks and curbs adjacent thereto.

(2) The cost and expense of the following shall be excluded from the calculation of operating expenses:

(a) leasing and brokerage commissions;

(b) executives’ salaries above the grade of building manager and superintendent;

(c) capital improvements and replacements which under generally accepted accounting principles and practice would be classified as capital expenditures, except the cost and expense of any improvement, alteration, replacement or installation
which is either (i) required by any Legal Requirement enacted or first applicable after the date of this Lease (whether such Legal Requirement so enacted or first applicable is a new requirement or a modification of an existing Legal Requirement), or (ii) designed, in Owner’s reasonable judgment, to result in savings or reductions in Operating Expenses (such improvements, alterations, replacements and installations are referred to as “Included Improvements”); the cost and expense of Included Improvements whenever made shall be included in Operating Expenses for any Escalation Year subsequent to the Base Escalation Year to the extent of (x) the annual amortization or depreciation of the cost and expense to Owner of such Included Improvements, as amortized or depreciated on a straight line basis over ten (10) years allocable to such Escalation Year plus (y) an annual charge for interest upon the unamortized or undepreciated portions of such cost and expense at the average prime rate (as defined in Section 31.03) during the Escalation Year in question;

(d) any other item which under generally accepted accounting principles and practice would not be regarded as an operating, maintenance or management expense;

(e) any item for which Owner is entitled to be compensated through proceeds of insurance or condemnation awards; and

(f) any specific compensation which Owner receives from any tenant for services rendered to such tenant by Owner above and beyond those services generally rendered by Owner to tenants in the Building without specific compensation therefor;

(g) costs and expenses of providing cleaning services to the tenantable areas of the Building;

(h) Taxes;

(i) franchise, mortgage, gross receipts, personal property, income, transfer, gains inheritance, sales, estate and gift taxes imposed on Owner;

(j) debt service (including both interest and amortization payments) and financing and refinancing costs;

(k) leasehold improvements made for tenants of the Building or made in order to prepare for occupancy by a new tenant, except for such costs which are repairs which would have been made in the absence of any such occupancy or lease;

(l) attorney’s fees and disbursements incurred (i) in procuring tenants or in negotiating leases or renewing leases, (ii) in connection with any mortgaging, financing, refinancing, sale, or entering into or extending or modifying any ground or underlying lease, or (iii) the resolution of disputes with other tenants or occupants of the Building unless legal fees for enforcement of space leases or other use agreements affects Tenant’s or any other tenant’s use or occupancy or enjoyment of the Building, the Demised Premises or the space occupied by such other tenant;

(m) depreciation on the Building and its components (subject, however, to the provisions of this Subsection 23.01H with respect to Included Improvements);

(n) advertising, entertainment and promotional expenses of the Building;

(o) any cost incurred by Owner to the extent Owner is entitled to specific reimbursement therefor by Tenant or any tenant or other occupant of the Building (excluding, however, any reimbursement from Tenant or any tenant pursuant to additional rent or rent escalation provisions in the nature of this Article 23);

(p) expenses in connection with services or other benefits provided to other tenants which are not provided to Tenant;

(q) the cost of repairs or replacements incurred by reason of fire or other casualty or condemnation;

(r) any cost representing an amount paid to an entity related to Owner which is in excess of the amount which would have been paid in the absence of such relationship, but without vitiating the provisions of Section 23.01H(1)(m); for the purposes of this Section 23.01H(2)(r), a related entity of Owner shall be any entity which is either owned or controlled by, or under common control with, Owner or any general partner of Owner by reason of ownership of such entity or control of the management and policies of such entity;

(s) costs which are attributable to the general overhead and administrative expenses of Owner, except to the extent specifically included in this Section 23.01H;

(t) political or charitable contributions;
lease takeover costs incurred by Owner in connection with the entering
into of leases in the Building and costs incurred by Owner to relocate tenants in the
Building in order to consummate a specific lease or to accommodate a specific
tenant’s request;

(v) to the extent any costs includible in Operating Expenses are incurred with
respect to both the Building and other properties (including, without limitation,
salaries, fringe benefits and other compensation of Owner’s personnel who provide
services to both the Building and other properties), there shall be excluded from
Operating Expense a fair and reasonable percentage thereof which is properly
allocable to such other properties;

(w) the amount of any fine or penalty paid by Owner due to Owner’s violation
of any Legal Requirement, and any interest paid by Owner in connection with its late
payment of any Operating Expenses;

(x) the cost of removing, encapsulating or otherwise abating any asbestos or
other hazardous material in the Building not generated or brought to the Building by
Tenant or its agents; provided, however, that for the purposes of this Subsection H(2)
(x), a hazardous material shall only be any substance or material deemed to be a
hazardous material by any Legal Requirement in effect on the date of this Lease and
introduced into the Building in violation of Legal Requirements in effect on the date
of this Lease, and any substances and materials that are deemed to be a hazardous
materials by any Legal Requirement enacted after the date of this Lease or hereafter
deemed in the Building in violation of Legal Requirements shall be referred to in this
Article 23 as “Future Hazardous Materials” and notwithstanding anything to the
contrary set forth in this Lease, the costs of removing or otherwise handling Future
Hazardous Materials shall be included in Operating Expenses as an Included
Improvement;

(y) costs attributable to the gross negligence or willful misconduct of Owner;

(z) the cost of installing, operating and maintaining any specialty service
such as an observatory, luncheon or other restaurant club or athletic or recreational
club;

(aa) the cost of acquisition of works of art of the quality and nature of fine art
as opposed to decorative artwork customarily found in first-class office buildings;

(bb) any compensation paid to clerks, attendants or other persons in
commercial concessions owned or operated by Owner or its affiliates in the Building;

(cc) all costs associated with selling or hypothecating any of Owner’s interests
in the Building;

(dd) leased items which, if purchased, would be treated as capital items
pursuant to generally accepted accounting principles consistently applied, and which
would not be includible in Operating Expenses as Included Improvements; and

(ee) auditing fees in connection with the resolution of disputes with other
tenants or occupants of the Building.

I. The term “Owner’s Tax Statement” shall mean an
instrument containing a reasonably detailed computation of any increase in the Fixed Rent pursuant to the provisions of
Section 23.02 of this Article. If not readily available to the public, Owner shall deliver with Owner’s Tax Statement a
copy of the tax bill for the Tax Escalation Year in question and with it understood that the first Owner’s Tax Statement
rendered shall include the tax bills for the periods in which Owner’s Basic Tax Liability is based.

J. The term “Owner’s Operating Expense Statement”
shall mean an instrument containing a computation of any increase in the Fixed Rent pursuant to the provisions of
Section 23.04 of this Article.

K. The term “Monthly Escalation Installment” shall
mean a sum equal to one-twelfth (1/12th) of the increase in the Fixed Rent payable pursuant to the provisions of
Subsection 23.04 A for the Escalation Year with respect to which Owner has most recently rendered an Owner’s Operating
Expense Statement, appropriately adjusted to reflect (i) in the event such Escalation Year is a partial calendar year, the
increase in the Fixed Rent which would have been payable for such Escalation Year if it had been a full calendar year, and
(ii) the amount by which current Operating Expenses as reasonably estimated by Owner exceed Operating Expenses as
reflected in such Owner’s Operating Expense Statement; and (iii) any net credit balance to which Tenant may be entitled
pursuant to the provisions of Subsection 23.05 C.

L. The term “Monthly Escalation Installment
Notice” shall mean a notice given by Owner to Tenant which sets forth the current Monthly Escalation Installment; such
Notice may be contained in a regular monthly rent bill, in an Owner’s Operating Expense Statement, or otherwise, and
Section 23.02. Taxes: A. If Taxes payable in any Tax Escalation Year shall be in such amount as shall constitute an increase above Owner’s Basic Tax Liability, the Fixed Rent for such Tax Escalation Year shall be increased by a sum equal to Tenant’s Proportionate Share of any such increase in Taxes.

B. Unless the first date with respect to which Tenant shall be responsible for a payment on account of increases in Taxes shall occur on a July 1st, any increase in the Fixed Rent pursuant to the provisions of Subsection A of this Section 23.02 for the Tax Escalation Year in which such date shall occur shall be apportioned in that percentage which the number of days in the period from such date to June 30th of such Tax Escalation Year, both inclusive, bears to the total number of days in such Tax Escalation Year. Unless the Demised Term shall expire on a June 30th, any increase in the Fixed Rent pursuant to the provisions of said Subsection A for the Tax Escalation Year in which the date of the expiration of the Demised Term shall occur shall be apportioned in that percentage which the number of days in the period from July 1st of such Tax Escalation Year to such date of expiration, both inclusive, bears to the total number of days in such Tax Escalation Year.

Section 23.03. Calculation and Payment of Taxes: A. Owner shall render to Tenant, either in accordance with the provisions of Article 27 or by personal delivery at the Demised Premises or by regular mail to the same address as Fixed Rent bills are sent by Owner, an Owner’s Tax Statement or Statements with respect to each Tax Escalation Year, either prior to or during such Tax Escalation Year. Owner’s failure to render an Owner’s Tax Statement with respect to any Tax Escalation Year shall not prejudice Owner’s right to recover any sums due to Owner hereunder with respect to such Tax Escalation Year nor shall it deprive Tenant of any credit to which it otherwise might be entitled to for any Tax Escalation Year pursuant to the provisions of Subsection C of this Section 23.03, provided however, that Owner shall submit an Owner’s Tax Statement with respect to any Tax Escalation Year within two (2) years after the end of any such Tax Escalation Year; otherwise, Owner shall be deemed to have waived the right to collect any sums as a result of increased taxes with respect to such Tax Escalation Year, provided that in the event Owner shall have so timely submitted such Owner’s Tax Statement, Owner shall not be precluded from exercising Owner’s rights under Subsection D of this Section 23.03 with respect to such two (2) year period. The obligations of Owner and Tenant under the provisions of Section 23.02 and this Section 23.03 with respect to any increase in Fixed Rent or any payment or credit to which Tenant may be entitled shall survive the expiration or any sooner termination of the Demised Term. Tenant acknowledges that under present law, Taxes are payable by Owner (i) with respect to a fiscal year commencing July 1st and ending on the following June 30th, and (ii) in two (2) installments, in advance, the first of which is payable on July 1st, and the second and final payment of which is payable on the following January 1st. Within thirty (30) days next following rendition of the first Owner’s Tax Statement which shows an increase in the Fixed Rent for any Tax Escalation Year (but in no event shall the same be due from Tenant prior to the date thirty (30) days before such payment is due to the taxing authority), Tenant shall pay to Owner one-half (½) of the amount of the increase shown upon such Owner’s Tax Statement for such Tax Escalation Year (including any apportionment pursuant to the provisions of Subsection B of Section 23.02); and, subsequently, provided Owner shall have rendered to Tenant an Owner’s Tax Statement, Tenant shall pay to Owner not later than thirty (30) days prior to the date on which the installment of Taxes is required to be paid by Owner a sum equal to one-half (½) of Tenant’s Proportionate Share of Taxes payable with respect to such Tax Escalation Year as shown on such Owner’s Tax Statement. Tenant further acknowledges that it is the purpose and intent of this Section 23.03 to provide Owner with Tenant’s Proportionate Share of the increase in Taxes pursuant to the provisions of this Subsection A thirty (30) days prior to the time such installment of Taxes is required to be paid by Owner without penalty or interest. Accordingly, Tenant agrees if the number of such installments and/or the date of payment thereof and/or the fiscal year used for the purpose of Taxes shall change then (a) at the time that any such revised installment is payable by Owner, Tenant shall pay to Owner the amount which shall provide Owner with Tenant’s Proportionate Share of the increases in Taxes pursuant to the provisions of Subsection 23.02.A applicable to the revised installment of Taxes then required to be paid by Owner, and (b) this Article shall be appropriately adjusted to reflect such change and the time for payment to Owner of Tenant’s Proportionate Share of any increase in Taxes as provided in this Article shall be appropriately revised so that Owner shall always be provided with Tenant’s Proportionate Share of the increase in Taxes thirty (30) days prior to the installment of Taxes required to be paid by Owner. Notwithstanding the foregoing provisions of this Subsection A to the contrary, in the event the holder of any mortgage affecting the Building, the plot of land on which it stands, or any ground or underlying lease, including, but not limited to, the Ground and Development Rights Lease, shall require Owner to make monthly deposits on account of real estate taxes, then this Article shall be appropriately adjusted to reflect the requirement that Owner make monthly deposits on account of real estate taxes so that Owner shall always be provided with one-twelfth (1/12th) of Tenant’s Proportionate Share of such increase in Taxes with respect to any Tax Escalation Year thirty (30) days prior to the payment by Owner of such monthly deposits on account of real estate taxes.

B. If, as a result of any application or proceeding brought by or on behalf of Owner, Owner’s Basic Tax Liability shall be decreased, Owner’s Tax Statement next following such decrease shall include any adjustment of the Fixed Rent for all prior Tax Escalation Years reflecting a debit to Tenant equal to the amount by which (a) the aggregate Fixed Rent payable with respect to all such prior Tax Escalation Years (as increased pursuant to the operation of the provisions of Subsection A of Section 23.02) based upon such reduction of Owner’s Basic Tax Liability shall exceed (b) the aggregate Fixed Rent actually paid by Tenant with respect to all such prior Tax Escalation Years.  

C. If, as a result of any application or proceeding brought by or on behalf of Owner for reduction of the assessed valuation of the Real Property for any fiscal tax year subsequent to the fiscal tax year commencing July 1st, 2016 and expiring June 30th, 2017, there shall be a decrease in Taxes for any Tax Escalation Year with respect to which Owner shall have previously rendered an Owner’s Tax Statement, Owner’s Tax Statement next following such decrease shall include an adjustment of the Fixed Rent for such Tax Escalation Year reflecting a credit to Tenant equal to the amount by which (i) the Fixed Rent actually paid by Tenant with respect to such Tax Escalation Year (as increased pursuant to the operation of the provisions of Subsection A of Section 23.02), shall exceed (ii) the Fixed Rent payable with respect to such Tax Escalation Year (as increased pursuant to
the operation of the provisions of Subsection A of Section 23.02) based upon such reduction of the assessed valuation. In the event that the Demised Term has expired, such credit shall be refunded to Tenant. Tenant shall not bring or cause to be brought any application or proceeding for reduction of the assessed valuation of the Real Property. Tenant shall pay to Owner within thirty (30) days after demand, as additional rent under this Lease, a sum equal to Tenant’s Proportionate Share of all reasonable out-of-pocket costs and expenses, including, without limitation, counsel fees, paid or incurred by Owner in connection with any application or proceeding brought for reduction of the assessed valuation of the Real Property or any other contest of Taxes upon the Real Property for any Tax Escalation Year, whether or not such application, proceeding or other contest was commenced and/or settled and/or determined prior to the Tax Escalation Year in question. Any amounts payable by either party to the other by operation of the provisions of this Subsection C shall be payable within thirty (30) days after rendition of an Owner’s Tax Statement.

Section 23.04. Operating Expenses: A. If Operating Expenses in any Escalation Year shall be in such an amount as shall constitute an increase above Base Operating Expenses, the Fixed Rent for such Escalation Year shall be increased by a sum equal to Tenant’s Proportionate Share of any such increase.

B. Unless the Commencement Date shall occur on a January 1st, any increase in the Fixed Rent pursuant to the provisions of Subsection A of this Section 23.04 for the Escalation Year in which the Commencement Date shall occur shall be apportioned in that percentage which the number of days in the period from the Commencement Date to December 31st of such Escalation Year, both dates inclusive, bears to the total number of days in such Escalation Year. Unless the Demised Term shall expire on December 31st any increase in the Fixed Rent pursuant to the provisions of Subsection A of this Section 23.04 for the Escalation Year in which the date of the expiration of the Demised Term shall occur shall be apportioned in that percentage which the number of days in the period from January 1st of such Escalation Year to such date of expiration, both dates inclusive, bears to the total number of days in such Escalation Year.

C. In the determination of any increase in the Fixed Rent pursuant to the foregoing provisions of this Section 23.04, if during any Escalation Year (i) the Building shall not have been fully occupied, or (ii) Owner shall not furnish any particular item(s) of work or service which would otherwise constitute an item(s) of Operating Expenses to portions of the Building because (a) such item(s) is not required or desired by the tenant or occupant of such portion, including Tenant, or (b) such tenant, including Tenant, is itself obtaining and providing such item(s) or (c) for any other reasons, Operating Expenses for such Escalation Year shall be equitably adjusted (by including such additional expenses as Owner would have incurred) to the extent, if any, required to reflect full occupancy or to reflect the fact that such item(s) is so provided by Owner, as the case may be.

Section 23.05. Calculation and Payment of Operating Expenses: A. Owner shall render to Tenant, either in accordance with the provisions of Article 27 or by personal delivery at the Demised Premises or by regular mail to the same address as Fixed Rent bills are sent by Owner, an Owner’s Operating Expense Statement with respect to each Escalation Year on or before the next succeeding October 1st. Owner’s failure to render an Owner’s Operating Expense Statement with respect to any Escalation Year shall not prejudice Owner’s right to recover any sums due to Owner hereunder with respect to such Escalation Year, provided however, that Owner shall submit an Owner’s Operating Expense Statement with respect to any Escalation Year within two (2) years after the end of such Escalation Year, otherwise Owner shall be deemed to have waived the right to collect any sums on account of Operating Expenses with respect to such Escalation Year.

B. Within thirty (30) days next following rendition of the first Owner’s Operating Expense Statement which shows an increase in the Fixed Rent for any Escalation Year, Tenant shall pay to Owner the entire amount of such increase. In order to provide for current payments on account of future potential increases in the Fixed Rent which may be payable by Tenant pursuant to the provisions of Subsection 23.04.A, Tenant shall also pay to Owner at such time, provided Owner has given to Tenant a Monthly Escalation Installment Notice, a sum equal to the product of (i) the Monthly Escalation Installment set forth in such Notice multiplied by (ii) the number of months or partial months which shall have elapsed between January 1st of the Escalation Year in which such payment is made and the date of such payment, less any amounts theretofore paid by Tenant to Owner on account of increases in the Fixed Rent for such Escalation Year pursuant to the provisions of the penultimate sentence of this Section 23.05.B; thereafter Tenant shall make payment of a Monthly Escalation Installment throughout each month of the Demised Term. Monthly Escalation Installments shall be added to and payable as part of each monthly installment of Fixed Rent. Notwithstanding anything to the contrary contained in the foregoing provisions of this Article, prior to the rendition of the first Owner’s Operating Expense Statement which shows an increase in the Fixed Rent for any Escalation Year, Owner may render to Tenant a pro-forma Owner’s Operating Expense Statement containing a bona fide estimate of the increase in the Fixed Rent for the Escalation Year in which the Commencement Date shall occur and/or the subsequent Escalation Year. Following the rendition of such pro-forma Owner’s Operating Expense Statement, Tenant shall pay to Owner a sum equal to one twelfth (1/12th) of the estimated increase in the Fixed Rent shown thereon for such Escalation Year or Years multiplied by the number of months which may have elapsed between the Commencement Date and the month in which such payment is made and thereafter pay to Owner, on the first day of each month of the Demised Term (until the rendition by Owner of the first Owner’s Operating Expense Statement) a sum equal to one twelfth (1/12th) of the increase in the Fixed Rent shown on such pro-forma Owner’s Operating Expense Statement. Any sums paid pursuant to the provisions of the immediately preceding sentence shall be credited against the sums required to be paid by Tenant to Owner pursuant to the Owner’s Operating Expense Statement for the first Escalation Year for which there is an increase in the Fixed Rent pursuant to the provisions of Subsection A.

C. Following rendition of the first Owner’s Operating Expense Statement and each subsequent Owner’s Operating Expense Statement a reconciliation shall be made as follows: Tenant shall be debited with any increase in the Fixed Rent shown on such Owner’s Operating Expense Statement and credited with the aggregate amount, if any, paid by Tenant in accordance with the provisions of Subsection B of this Section on account of future increases in the Fixed Rent pursuant to Subsection 23.04.A, which has not previously been credited against increases in the Fixed Rent shown on Owner’s Operating Expense Statements. Tenant
shall pay any net debit balance to Owner within thirty (30) days next following rendition by Owner, either in accordance with the provisions of Article 27 or by personal delivery at the Demised Premises or by regular mail to the same address as Fixed Rent bills are sent by Owner, of an invoice for such net debit balance; any net credit balance shall be applied as an adjustment against the next accruing Monthly Escalation Installment as provided in Subsection L of Section 23.01 (unless there is no such Monthly Escalation Installment remaining, in which event any net credit balance shall be payable by Owner to Tenant within fifteen (15) days next following the rendition of the Owner’s Operating Expense Statement.)

D. Notwithstanding anything to the contrary contained herein, in no event shall Tenant be required to pay any increases in respect of Operating Expenses for or with respect to any period prior to the date one (1) year immediately following the Commencement Date.

Section 23.06. Dispute Resolution: A. In the event of any dispute between Owner and Tenant arising out of the application of the Operating Expense provisions of this Article, such dispute shall be determined by arbitration in New York City in accordance with the provisions of Article 36. Notwithstanding any such dispute and submission to arbitration, or any dispute with respect to the Tax Payment provisions of this Article (which dispute shall not be subject to arbitration but which can only be prosecuted by the institution of legal proceedings by Tenant), any increase in the Fixed Rent shown upon any Owner’s Operating Expense Statement or any Monthly Escalation Installment Notice or any Owner’s Tax Statement shall be payable by Tenant within the time limitation set forth in this Article. If the determination in such arbitration or legal proceedings shall be adverse to Owner, any amount paid by Tenant to Owner in excess of the amount determined to be properly payable shall be credited against the next accruing installments of Fixed Rent due under this Lease. However, if there are no such installations, such amounts shall be paid by Owner to Tenant within ten (10) days following such determination.

B. In the event Tenant disagrees with any computation or other matter contained in any Owner’s Operating Expense Statement or any Monthly Escalation Installment Notice, Tenant shall have the right to give notice to Owner within one hundred eighty (180) days next following rendition of such Statement or Notice setting forth the particulars of such disagreement. If the matter is not resolved within thirty (30) days next following the giving of such notice by Tenant, any such dispute with respect to Taxes shall be determined by applicable legal proceedings and any such dispute with respect to Operating Expenses shall be deemed a dispute which either party may submit to arbitration pursuant to the provisions of Subsection A of this Section. If (i) Tenant does not give a timely notice to Owner in accordance with the foregoing provisions of this Subsection disagreeing with any computation or other matter contained in any Owner’s Operating Expense Statement or any Monthly Escalation Installment Notice and setting forth the particulars of such disagreement, or (ii) if any such timely notice shall have been given by Tenant, the matter shall not have been resolved and, with respect to Operating Expenses, neither party shall have submitted the dispute to arbitration within thirty (30) days next following the giving of such notice by Tenant, Tenant shall be deemed conclusively to have accepted such Owner’s Operating Expense Statement or Monthly Escalation Installment Notice, as the case may be, and shall have no further right to dispute the same. At the time Tenant performs its first audit of Operating Expenses for any Escalation Year, Tenant shall also be entitled to audit the Base Operating Expenses.

C. Tenant or its usual auditors of its normal books and records (provided same are certified public accountants) or any other firm of independent certified public accountants having at least 25 partners or shareholders and a reputation in the industry for performing quality audits similar to those performed by any of the so-called “big four” accounting firms, in each case at Tenant’s expense, shall have the right to examine those portions of Owner’s records which are reasonably required to verify the accuracy of any amounts shown on any Owner’s Operating Expense Statement (including, at the time Tenant performs its first audit, Owner’s Operating Expense statement rendered in connection with the Base Escalation Year) provided Tenant shall notify Owner of its desire to so examine such records within one hundred eighty (180) days next following rendition of such Owner’s Operating Expense Statement. Owner shall maintain such records for a period of three (3) years following the expiration of the Escalation Year to which they relate. Upon Tenant’s timely request, Owner shall make such records available and any such examination shall be conducted at the office of Owner’s accountants in New York City or at such other reasonable place designated by Owner during normal office hours.

(2) Tenant acknowledges and agrees that not more than three (3) of its employees or three (3) persons employed by such auditors shall be entitled to entry to the offices of Owner at any one time for the purposes of such review and inspection. Tenant hereby recognizes the confidential, privileged and proprietary nature of such records and the information and data contained therein, as well as any compromise, settlement or adjustment reached between Owner and Tenant relating to the results of such examination, and Tenant covenants and agrees for itself, and its employees, agents and representatives (including, but not limited to, such auditors, attorneys or consultants) to keep the results of such examination confidential, and not to divulge, disclose or reveal to any other person except (x) to the extent required by law, court order or directive of any Governmental Authority or (y) to such auditors or any attorneys retained by Tenant or consultants retained by Tenant in connection with any action or proceeding between Owner and Tenant as to Operating Expenses or Owner’s Operating Expense Statement and no examination of any such records shall be permitted unless and until such auditors, attorneys and consultants affirmatively agree and consent to be bound by the provisions of this Section 23.06C.

(3) Tenant agrees that this Section 23.06C is of material importance to Owner and that any violation thereof shall result in immediate harm to Owner and Owner shall have all rights allowed by law or equity if Tenant, its employees, agents, and representatives (including, but not limited to, such auditors, attorneys or consultants) violate the terms of this Section 23.06C, and Tenant shall indemnify and hold Owner harmless of and from all loss, cost, damage, liability and expense (including, but not limited to reasonable out of pocket counsel fees and disbursements) arising from a breach of the foregoing obligations of Tenant or any of its employees, agents and representatives, (including but not limited to, such auditors, attorneys or consultants). This obligation of Tenant and its employees, agents and representatives (including, but not limited to, any
such auditors, attorneys or consultants) shall survive the expiration or sooner term of the Demised Term.

Section 23.07. Collection of Increases in Fixed Rent: Subject to the provisions of this Article, the obligations of Owner and Tenant under the provisions of this Article shall survive the expiration or any sooner termination of the Demised Term. All sums payable by Tenant under this Article shall be collectible by Owner in the same manner as additional rent.

ARTICLE 24

NO WAIVER

Section 24.01. Owner’s Termination Not Prevented: Neither any option granted to Tenant in this Lease or in any collateral instrument to renew or extend the Demised Term, nor the exercise of any such option by Tenant, shall prevent Owner from exercising any option or right granted or reserved to Owner in this Lease or in any collateral instrument or which Owner may have by virtue of any law, to terminate this Lease and the Demised Term or any renewal or extension of the Demised Term either during the original Demised Term or during the renewed or extended term. Any termination of this Lease and the Demised Term shall serve to terminate any such renewal or extension of the Demised Term and any right of Tenant to any such renewal or extension, whether or not Tenant shall have exercised any such option to renew or extend the Demised Term. Any such option or right on the part of Owner to terminate this Lease shall continue during any extension or renewal of the Demised Term. No option granted to Tenant to renew or extend the Demised Term shall be deemed to give Tenant any further option to renew or extend.

Section 24.02. No Termination by Tenant/No Waiver: No act or thing done by Owner or Owner’s agents during the Demised Term shall constitute a valid acceptance of a surrender of the Demised Premises or any remaining portion of the Demised Term except a written instrument accepting such surrender, executed by Owner. No employee of Owner or of Owner’s agents shall have any authority to accept the keys of the Demised Premises prior to the termination of this Lease and the Demised Term, and the delivery of such keys to any such employee shall not operate as a termination of this Lease or a surrender of the Demised Premises; however, if Tenant desires to have Owner sublet the Demised Premises for Tenant’s account, Owner or Owner’s agents are authorized to receive said keys for such purposes without releasing Tenant from any of its obligations under this Lease, and Tenant hereby relieves Owner of any liability for loss of, or damage to, any of Tenant’s property or other effects in connection with such subletting. The failure by Owner or Tenant to seek redress for breach or violation of, or to insist upon the strict performance of, any term, covenant or condition of this Lease on the other party’s part to be observed or performed, shall not prevent a subsequent act or omission which would have originally constituted a breach or violation of any such term, covenant or condition from having all the force and effect of an original breach or violation. The receipt by Owner or payment by Tenant of rent with knowledge of the breach or violation by the other party of any term, covenant or condition of this Lease on such party’s part to be observed or performed shall not be deemed a waiver of such breach or violation. Owner’s failure to enforce any Building Rule against Tenant or against any other tenant or occupant of the Building shall not be deemed a waiver of any such Building Rule. No provision of this Lease shall be deemed to have been waived by Owner unless such waiver shall be set forth in a written instrument executed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the aggregate of all Fixed Rent and additional rent then due under this Lease shall be deemed to be other than on account of the first accruing of all such items of Fixed Rent and additional rent then due, no endorsement or statement on any check and no letter accompanying any check or other rent payment in any such lesser amount and no acceptance of any such check or other such payment by Owner shall constitute an accord and satisfaction, and Owner may accept any such check or payment without prejudice to Owner’s right to recover the balance of such rent or to pursue any other legal remedy.

ARTICLE 25

MUTUAL WAIVER OF TRIAL BY JURY

Section 25.01. Owner and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by Owner or Tenant against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of landlord and tenant, the use or occupancy of the Demised Premises by Tenant or any person claiming through or under Tenant, any claim of injury or damage, and any emergency or other statutory remedy; however, the foregoing waiver shall not apply to any action for personal injury or property damage. The provisions of the foregoing sentence shall survive the expiration or any sooner termination of the Demised Term. If Owner commences any summary proceeding, or any other proceeding of like import, Tenant agrees: (i) not to interpose any counterclaim of whatever nature or description in any such summary proceeding, or any other proceeding of like import, unless failure to interpose such counterclaim would preclude Tenant from asserting such claim in a separate action or proceeding; and (ii) not to seek to remove to another court or jurisdiction or consolidate any such summary proceeding, or other proceeding of like import, with any action or proceeding which may have been, or will be, brought by Tenant. In the event that Tenant shall breach any of its obligations set forth in the immediately preceding sentence, Tenant agrees (a) to pay all of Owner’s ‘reasonable attorneys’ fees and disbursements in connection with Owner’s enforcement of such obligations of Tenant and (b) in all events, to pay all accrued, present and, as the same become due under this Lease, future Fixed Rent and increases therein and additional rent payable pursuant to the provisions of this Lease.

Section 25.02. Each of Owner and Tenant hereby submits itself to the jurisdiction of the State of New York in any action or proceeding arising out of or under this Lease, and each of Owner and Tenant agrees that this Lease shall be governed, construed and interpreted in accordance with the laws of the State of New York which shall apply in any such action or proceeding.
B. All judicial actions, suits or proceedings brought against Tenant with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Lease or for recognition or enforcement of any judgment rendered in any such proceedings may be brought in any state or federal court of competent jurisdiction in the City of New York. By execution and delivery of this Lease, Tenant accepts, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any final judgment rendered thereby in connection with this Lease from which no appeal has been taken or is available. Tenant hereby irrevocably waives any objection to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Nothing herein shall limit the right of Owner to bring any action, suit or proceeding against Tenant in any other court of competent jurisdiction. Tenant acknowledges that final judgment against it in any action, suit or proceeding referred to in this Article shall be conclusive and may be enforced in any other jurisdiction, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of any such judgment against Tenant.

ARTICLE 26

INABILITY TO PERFORM

Section 26.01. If, by reason of strikes or other labor disputes, fire or other casualty (or reasonable delays in adjustment of insurance), accidents, any Legal Requirements, any orders of any Governmental Authority or any other cause beyond Owner’s reasonable control, whether or not such other cause shall be similar in nature to those hereinbefore enumerated (each, a “Force Majeure Event”), Owner is unable to furnish or is delayed in furnishing any utility or service required to be furnished by Owner under the provisions of Article 29 or any other Article of this Lease or any collateral instrument, or is unable to perform or make or is delayed in performing or making any installations, decorations, repairs, alterations, additions or improvements, whether or not required to be performed or made under this Lease or under any collateral instrument, or is unable to fulfill or is delayed in fulfilling any of Owner’s other obligations under this Lease or any collateral instrument, no such inability or delay shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business, or otherwise.

Section 26.02. Tenant’s Inability to Perform: If, by reason of strikes or other labor disputes, fire or other casualty (or reasonable delays in adjustment of insurance), accidents, any Legal Requirements, any orders of any Governmental Authority or any other cause beyond Tenant’s reasonable control whether or not similar to those hereinabove enumerated, Tenant is unable to fulfill any of Tenant’s obligations under this Lease or any collateral instrument (with the exception of any obligations on Tenant’s part to pay any sum of money due Owner, including, without limitation, the payment of Fixed Rent or increases thereof, or any additional rent, which monetary obligation shall remain unaffected by the provisions of this Section 26.02), Tenant shall not be required to fulfill such non-monetary obligations during the period that Tenant is so unable to fulfill them by reason of the above.

ARTICLE 27

NOTICES

Section 27.01. Except as otherwise expressly provided in this Lease, any bills, statements, notices, demands, requests or other communications given or required to be given under this Lease (sometimes collectively referred to as a “Notice”) shall be effective only if rendered or given in writing, sent by registered or certified mail (return receipt requested), or sent by nationally recognized courier service (e.g. Federal Express) providing dated evidence of receipt or refusal to accept delivery by the addressee, addressed as follows:

(a) To Tenant (i) at Tenant’s address set forth in this Lease if mailed prior to Tenant’s taking possession of the Demised Premises, Attn: General Counsel or (ii) at the Building if mailed subsequent to Tenant’s taking possession of the Demised Premises, Attn: General Counsel or (iii) at any place where Tenant or any agent or employee of Tenant may be found if mailed subsequent to Tenant’s vacating, deserting, abandoning or surrendering the Demised Premises, and in each of any notice of default or notice of termination given pursuant to Article 16 hereof, with a copies to Davis & Gilbert LLP, 1740 Broadway, New York, New York 10019, Attn: James Levine, Esq., or

(b) To Owner at Owner’s address set forth in this Lease, Attention: William C. Rudin with a copy to Goldfarb & Fleece LLP, 560 Lexington Avenue, 6th Floor, New York, NY 10022, Attention: Partner-in-Charge, Rudin Management, or

(c) addressed to such other address as either Owner or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. Any such bill, statement, notice, demand, request or other communication shall be deemed to have been rendered or given (x) if mailed: on the date when it shall have been mailed or (y) if sent by nationally recognized courier: on the date when it shall have been delivered by such courier service or when delivery by such courier service was refused by the addressee. Refusal to accept delivery of any Notice shall not limit or negate delivery of such Notice or limit, negate or render ineffective any such Notice.

Nothing contained in this Section 27.01 shall preclude, limit or modify Owner’s service of any notice, statement, demand or other communication in the manner required by law, including, but not limited to, any demand for rent under Article 7 of the New York Real Property Actions and Proceedings Law or any successor laws of like import.
ARTICLE 28

PARTNERSHIP TENANT

Section 28.01. If Tenant’s interest in this Lease shall be assigned to a general partnership (or to two (2) or more persons, individually and as co-partners of a general partnership) pursuant to Article 11 (any such general partnership and such persons are referred to in this Section as “Partnership Tenant”), the following provisions of this Section shall apply to such Partnership Tenant: (i) each of the persons comprising Partnership Tenant, whether or not such person shall be one of the persons comprising Tenant at the time in question, hereby consents in advance to, and agrees to be bound by, any written instrument which may hereafter be executed, changing, modifying or discharging this Lease, in whole or in part, or surrendering all or any part of the Demised Premises to Owner, and by any notices, demands, requests or other communications which may hereafter be given by Partnership Tenant or by any of the persons comprising Partnership Tenant, and (ii) any bills, statements, notices, demands, requests or other communications given or rendered to Partnership Tenant or to any of the persons comprising Partnership Tenant shall be deemed given or rendered to Partnership Tenant and to all such persons and shall be binding upon Partnership Tenant and all such persons, and (iii) Partnership Tenant shall give prompt notice to Owner of the admission of any such new partners, or shareholders, or members, as the case may be.

ARTICLE 29

UTILITIES AND SERVICES

Section 29.01. Elevators: As long as this Lease is in full force and effect, Owner, at Owner’s expense, shall furnish necessary passenger elevator facilities on business days (as defined in Section 31.01) from 8:00 A.M. to 6:00 P.M. at a level consistent with Class A office buildings in midtown Manhattan and shall have a reasonable number of passenger elevators subject to call at all other times. Tenant shall be entitled to the non-exclusive use of the freight elevators in common with other tenants and occupants of the Building from 8:00 A.M. to 6:00 P.M. on business days, subject to such reasonable rules as Owner may adopt for the use of the freight elevator. At any time or times all or any of the elevators in the Building may, at Owner’s option, be automatic elevators, and Owner shall not be required to furnish any operator service for automatic elevators. If Owner shall, at any time, elect to furnish operator service for any automatic elevators, Owner shall have the right to discontinue furnishing such service with the same effect as if Owner had never elected to furnish such service.

Section 29.02. Heat, Air Conditioning and Ventilation: As long as this Lease is in full force and effect, Owner, at Owner’s expense (subject to the provisions of this Section and Section 29.04), shall furnish and distribute to the Demised Premises through the Building heating, ventilating and air conditioning (referred to as “HVAC”) systems, when required for the comfortable occupancy of the Demised Premises, heated, cooled and outside air, in accordance with the specification attached hereto and made a part hereof as Exhibit 2 (the “HVAC Spec”) on a year-round basis from 8:00 A.M. to 6:00 P.M. on business days and from 8:00 A.M. to 1:00 P.M. on Saturdays. Tenant understands, however, that the equipment which will be employed in distributing air will be connected to Tenant’s electric meter and Tenant shall be responsible for payment of all electricity consumed by such equipment. Notwithstanding the foregoing provisions of this Section, Owner shall not be responsible if the normal operation of the HVAC systems shall fail to meet the HVAC Spec in any portions of the Demised Premises (a) which, by reason of any machinery or equipment installed by or on behalf of Tenant or any person claiming through or under Tenant, shall have an electrical load in excess of four (4) watts per square foot of usable area for all purposes (including lighting and power), or which shall have a human occupancy factor in excess of one person per 100 square feet of usable area (the average electrical load and human occupancy factors for which the HVAC systems are designed) or (b) because of any rearrangement of partitioning or other Alterations made or performed by or on behalf of Tenant or any person claiming through or under Tenant. Whenever said HVAC systems are in operation, Tenant agrees to cause all of the windows in the Demised Premises to be kept closed and to cause the venetian blinds in the Demised Premises to be kept closed if necessary because of the position of the sun. Tenant agrees to cause all the windows in the Demised Premises to be closed whenever the Demised Premises are not occupied. Tenant shall cooperate fully with Owner at all times and abide by all regulations and requirements which Owner may reasonably prescribe for the proper functioning and protection of the Building HVAC systems.

Section 29.03. Cleaning: A. As long as this Lease is in full force and effect, and provided Tenant shall keep the Demised Premises in order, Owner, at Owner’s expense, shall cause the office areas of the Demised Premises to be cleaned substantially in accordance with the standards set forth in Schedule B, as such Schedule may be reasonably modified by Owner from time to time, provided such modifications do not render the Schedule inconsistent with the level of services generally provided in first class office Buildings in mid-town Manhattan and shall cause Tenant’s ordinary office waste paper refuse to be removed. Tenant shall cooperate with any waste and garbage recycling program of the Building and shall comply with all reasonable rules and regulations of Owner with respect thereto. Tenant acknowledges that Owner’s obligation to cause the office areas of the Demised Premises to be cleaned excludes any portion of the Demised Premises not used as office areas (e.g., storage, mail and computer areas, private lavatories and areas used for the storage, preparation, service or consumption of food or beverages). Tenant shall pay Owner at Building standard rates or, if there are no such rates, at reasonable rates, for the removal of any of Tenant’s refuse or rubbish, other than ordinary office waste paper refuse, from the Building, and Tenant, at Tenant’s expense, shall cause all portions of the Demised Premises used for the storage, preparation, service or consumption of food or beverages to be cleaned daily in a manner satisfactory to Owner, and to be exterminated against infestation by vermin, roaches or rodents regularly and, in addition, whenever there shall be evidence of any infestation. Tenant shall contract independently with Owner or its cleaning services contractor for the removal of such other refuse and rubbish and for cleaning services in addition to those furnished by Owner and for the purpose of providing extermination services required to be performed by Tenant.
B. Tenant acknowledges and is aware that the cleaning services required to be furnished by Owner pursuant to this Section may be furnished by a contractor or contractors employed by Owner and agrees that Owner shall not be deemed in default of any of its obligations under this Section 29.03 unless such default shall continue for an unreasonable period of time after notice from Tenant to Owner setting forth the specific nature of such default.

C. Notwithstanding the last sentence of 29.03 of this Section, Tenant shall have the option to contract independently for the removal of such other refuse and rubbish and for office cleaning services in addition to those furnished by Owner. In the event Tenant exercises such option, the removal of such other refuse and rubbish and the furnishing of office cleaning services to Tenant by persons other than Owner and its contractors shall be performed in accordance with such regulations and requirements as, in Owner’s judgment, are necessary for the proper operation of the Building, and Tenant agrees that Tenant will not permit any person to enter the Demised Premises or the Building for such purposes, or for the purpose of providing extermination services required to be performed by Tenant pursuant to Subsection A of this Section, other than persons first approved by Owner, such approval not unreasonably to be withheld.

Section 29.04. Electricity. A. Tenant shall make arrangements to supply all electricity in the Demised Premises, including, but not limited to, electricity to serve the air conditioning and ventilating equipment and hot water heater installed in the Demised Premises by contracting directly with the Utility (as hereinafter defined) and with any corporation and/or other entity, if any, qualified by the Utility to supply electrical energy for the Demised Premises (which is to be transmitted by the Utility) and shall pay the Utility and said corporation and/or other entity, if any, for all electrical energy delivered and consumed in or about the Demised Premises. For purposes of this Section 29.04, the "Utility" shall mean the corporation or other entity supplying electrical transmission and distribution service to the Building. As of the date hereof, the Utility with respect to the Building is Consolidated Edison. In connection with the purchase of electric energy by Tenant, Tenant shall install for the Demised Premises, metering facilities, including the type of meter furnished by the Utility so selected by Owner, to provide metering of the Demised Premises which metering shall measure both demand and consumption of electric energy, but Owner shall provide, at Owner’s cost, a meter pan for each floor on which a portion of the Demised Premises is located. Owner will reasonably cooperate with Tenant, at Tenant’s request but at no cost, expense or liability to Owner in connection with Tenant obtaining electrical energy.

B. If either the quantity or character of electrical service is changed by the corporation(s) and/or other entity(ies) selected by Owner to supply electrical service to the Building or is no longer available or suitable for Tenant’s requirements, no such change, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution or refund, or relieve Tenant from any of its obligations under this Lease, or, unless due to the gross negligence or willful misconduct of Owner or its agents, contractors, or employees, impose any liability upon Owner, or its agents, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business or otherwise.

C. Owner represents that the electrical feeder or riser capacity serving the Demised Premises on the Commencement Date shall be adequate to provide six (6) watts per usable square feet demand load (exclusive of base building HVAC, including without limitation, exclusive of the air handler units component thereof) of electrical energy to serve the Demised Premises and agrees that Owner will not reduce such capacity. Owner shall have no obligation to provide additional electrical capacity or make the same available to Tenant. Tenant covenants that at no time shall the use of electrical energy in the Demised Premises exceed the capacity of the existing feeders or wiring installations then serving the Demised Premises. Tenant shall not make or perform, or permit the making or performance of, any Alterations to wiring installations or other facilities in or serving the Demised Premises, without the prior consent of Owner in each instance, which shall be granted or withheld in accordance with Article 3.

D. Notwithstanding anything to the contrary set forth in this Lease, any sums payable or granted in any way by the corporation(s) and/or other entities selected by Owner to supply electricity to the Building resulting from the installation in the Demised Premises of energy efficient lighting, special supplemental heating, ventilation and air conditioning systems or any other Alterations, which sums are paid or given by way of rebate, direct payment, credit or otherwise, shall be and remain the property of Owner, and Tenant shall not be entitled to any portion thereof, unless such lumping, supplemental heating, ventilation and air conditioning systems or other Alterations were installed by Tenant, solely at Tenant’s expense, without any contribution, credit or allowance by Owner, in accordance with all of the provisions of this Lease. Nothing contained in the foregoing sentence, however, shall be deemed to obligate Owner to supply or install in the Demised Premises any such lumping, supplemental heating, ventilation and air conditioning systems or other Alterations.

Section 29.05. Water. Owner, at Owner’s expense, shall provide reasonable quantities of hot and cold water for ordinary lavatory, pantry and drinking purposes. The foregoing notwithstanding, Tenant understands that with respect to the hot water provided to the toilets and any pantries, the hot water heater will be connected to Tenant’s electric meter and that Tenant shall be responsible for payment of all electricity consumed by such equipment. In addition, if Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory, pantry and drinking purposes, Owner may install a cold water meter and thereby measure Tenant’s consumption of water for such additional purposes only. Tenant shall pay to Owner the cost of any such meters and their installation, and Tenant shall keep any such meters and any such installation equipment in good working order and repair, at Tenant’s cost and expense. Tenant agrees to pay for water consumed as shown on said meters, and sewer charges, taxes and any other governmental charges thereon, as and when bills are rendered. For the purposes of determining the amount of any sums required to be paid by Tenant under this Section, all water consumed during any period when said meters are not in good working order shall be deemed to have been consumed at the rate of consumption of such water during the most comparable period when such meters were in good working order.
Section 29.06. Overtime Periods: The Fixed Rent does not reflect or include any charge to Tenant for the furnishing or distributing of any freight elevator or HVAC services to the Demised Premises during periods (referred to as "Overtime Periods") other than the hours and days set forth above in (x) Section 29.01 with respect to freight elevator service and (y) Section 29.02 with respect to HVAC services for the furnishing and distributing of such services. Accordingly, if Owner shall furnish any such freight elevator or HVAC services to the Demised Premises at the request of Tenant during Overtime Periods, Tenant shall pay Owner for such services at the standard rates then fixed by Owner for the Building or, if no such rates are then fixed, at reasonable rates. As of the date hereof, the rate for providing overtime freight elevator use is ONE HUNDRED TWENTY and 00/100 DOLLARS ($120.00) per hour, the rate for providing air-conditioning is SEVENTY-SIX and 00/100 DOLLARS ($76.00) per hour per HVAC zone and the rate for providing heat is ONE HUNDRED THIRTY-EIGHT and 00/100 DOLLARS ($138.00) per hour per HVAC zone. Tenant acknowledges that each floor above the lobby level of the Building is in its own HVAC zone. Owner shall not be required to furnish any such services during Overtime Periods, unless Owner has received reasonable advance notice from Tenant requesting such services. If Tenant fails to give Owner reasonable advance notice requesting such services during any Overtime Periods, then, whether or not the Demised Premises are habitable during such Overtime Periods, failure by Owner to furnish or distribute any such services during such Overtime Periods shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business or otherwise. Subject to union requirements, there is a four (4) hour minimum for Tenant’s request for overtime HVAC service, or freight elevator service unless such overtime HVAC service, or freight elevator service is requested for a period immediately following the normal operating hours set forth in Section 29.01 and Section 29.02 in which event there is a one (1) hour minimum. The foregoing terms and conditions of this Section 29.06 notwithstanding, Tenant shall not be obligated to pay any overtime freight elevator use charges (x) with respect to Tenant’s initial move-in to the Demised Premises for the conduct of business and (y) with respect to one hundred (100) hours of use in connection with Tenant’s Initial Installation.

Section 29.07. Owner’s Right to Stop Service: Owner reserves the right to stop the service of the HVAC, elevator, plumbing, electrical or other mechanical systems or facilities in the Building when necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements, which, in the judgment of Owner are desirable or necessary, until said repairs, alterations, replacements or improvements shall have been completed. The exercise of such right by Owner shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business, or otherwise. Except in cases of emergency, Owner agrees to give Tenant reasonable advance notice of any such stoppage, including the estimated duration thereof. Owner agrees to use reasonable efforts to restore any interrupted services as soon as reasonably practicable, without any obligation, however, to employ labor at overtime or other premium pay rates.

Section 29.08. Tenant’s Supplemental A/C Unit/Cooling Tower: A. (1) Supplementing the provisions of Section 29.05, in the event (a) a separate air conditioning system to serve the Demised Premises is installed by or on behalf of Tenant in accordance with the provisions of this Lease (referred to herein as “Tenant’s Supplemental A/C Unit”), (b) Tenant requests that such Unit be hooked up to any Building cooling tower and associated piping (referred to herein as the “Cooling Tower”) and (c) Owner consents to such hookup, then, in those events, Owner agrees, subject to the provisions of Article 26 and Section 29.07, to supply condenser water to Tenant’s Supplemental A/C Unit twenty-four (24) hours per day, three hundred sixty-five (365) days per year, and Tenant agrees that (i) Tenant shall pay to Owner, within thirty (30) days after demand therefor, the Building standard hookup fee then charged by Owner, and (ii) from and after the date the hookup is completed, the Fixed Rent reserved in this Lease shall be increased by a sum (referred to herein as the “Tenant’s Cooling Tower Use Charge”) equal to (x) the standard per ton charge then in effect in the Building, multiplied by (xx) the number of tons of Tenant’s Supplemental A/C Unit.

(2) Subject to the terms of this Section 29.08(2), Owner shall make up to ten (10) tons in the aggregate of condenser water (the “Reserved Tons”) available to Tenant for Tenant’s use. The foregoing notwithstanding, Tenant shall only have the right to utilize such tons by hooking up to the same as part of Tenant’s Initial Installation. Owner agrees with respect to any such hook-ups for the Reserved Tons performed on or prior to March 1, 2017 to charge Tenant a hook-up fee of Four-Hundred Fifty and 00/100 Dollars ($450.00) per ton of condenser water and an initial Tenant’s Cooling Tower Use Charge based on an annual rate of Seven Hundred and 00/100 Dollars (700.00) per ton.

B. If the regular hourly wage rate of operating engineers employed in the Building shall be increased in any Escalation Year (as defined in Article 23) over the rate in effect on the January 1st immediately preceding such hookup, the Fixed Rent for such Escalation Year shall be increased by a sum equal to that proportion of Tenant’s Cooling Tower Use Charge which such increase in said hourly wage rate bears to the hourly wage rate in effect on the January 1st immediately preceding such hookup. The increase in Fixed Rent for any Escalation Year pursuant to the provisions of the immediately preceding sentence shall be shown on the Owner’s Operating Expense Statement with respect to such Escalation Year rendered by Owner pursuant to the provisions of said Article 23, and shall be payable by Tenant as if it were an increase in the Fixed Rent pursuant to the provisions of said Article 23.

C. Any increase in Fixed Rent for Tenant’s Cooling Tower Use Charge shall be effective as of the date Tenant’s Supplemental A/C Unit is hooked up to the Cooling Tower and shall be retroactive to such date if necessary.

D. Tenant’s Supplemental A/C Unit shall be repaired and maintained by Tenant at Tenant’s cost and expense, pursuant to a service contract.
Section 29.09. **Telecommunications:** A. Owner shall have no obligation to provide Tenant with any telecommunication services or facilities to or for the Demised Premises or the use or occupancy thereof by Tenant or any person through or under Tenant. With respect to Tenant’s telecommunications facilities and services, Tenant shall contract separately with all providers of Tenant’s telecommunications facilities and services (each of which is referred to as a “Tenant’s Telecommunications Service Provider”) and pay each Tenant’s Telecommunications Service Provider for all services provided by it to Tenant pursuant to a separate agreement between Tenant and Tenant’s Telecommunications Service Provider. Neither Tenant nor Tenant’s Telecommunications Service Provider shall use any portion of the Building, including any risers, shafts, conduits or other facilities, to bring such telecommunications services to the Demised Premises without the prior written consent of Owner in each instance. Any such use, if granted, shall (i) be subject to all of the rules and regulations imposed by Owner with respect to the Building’s shafts or other telecommunications facilities and the installation, use, operation and maintenance of any telecommunications facilities, and (ii) shall not interfere with any other tenant or occupant of the Building.

B. Tenant acknowledges that Owner has installed a telecommunications cable distribution system in the Building (referred to herein as the “Building CDS System”). Accordingly, notwithstanding anything in Subsection A above to the contrary, Tenant and Tenant’s Telecommunications Service Provider shall use such Building CDS System to bring telecommunication services to the Demised Premises and shall not be permitted to use any other portion of the Building, including any risers, shafts, conduits or other facilities, in connection with such telecommunication services without the prior written consent of Owner in each instance. To the extent that Owner shall as a matter of Building practice or procedure, cause telecommunication providers to enter into a license agreement with Owner for the use of such Building CDS System and pay fees with respect thereto, Tenant acknowledges and agrees that Tenant’s Telecommunications Service Provider shall be required to enter into such license agreement with Owner and pay such fees. If the Building CDS System is owned or operated by a separate cable distribution service company in the Building (referred to as the “Telecommunications Cable Distribution Company”) for the supply, maintenance and distribution of facilities in such Building CDS System, Tenant’s Telecommunications Service Provider shall also contract with such Telecommunications Cable Distribution Company for the use of the facilities provided by such Building CDS System and pay any fees with respect thereto.

C. Owner shall have no obligation for Tenant to allow Tenant’s Telecommunications Service Provider into the Building unless and until such Tenant’s Telecommunications Service Provider shall execute a license agreement with Owner and, if applicable, contract with such Telecommunications Cable Distribution Company. If Tenant is unable to use a particular Tenant’s Telecommunication Service Provider because it fails to enter into an agreement with Owner and/or the Telecommunications Cable Distribution Company and pay any fees in connection therewith, no such inability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or release Tenant from any of its obligations under this Lease, or impose any liability upon Owner or Owner’s Indemnities by reason of inconvenience or annoyance to Tenant or interruption of Tenant’s business or otherwise. Tenant and Tenant’s Telecommunications Service Provider shall comply with all reasonable rules and regulations adopted by Owner and the Telecommunications Cable Distribution Company with respect to the use of the Building CDS System. Owner and “Owner’s Indemnities” (as defined in Article 19) shall not be liable to Tenant, or anyone claiming through or under Tenant, for any damages, including, but not limited to, special, incidental, remote or consequential damages, including, without limitation, lost revenue, lost profits and additional operating or personnel expenses arising from any acts, omissions or negligence of Tenant’s Telecommunications Service Provider and the Telecommunications Cable Distribution Company. Nothing contained in this Subsection shall obligate Owner (s) to cause to be installed such Building CDS System or (y) to own such Building CDS System, which Tenant acknowledges may be owned by a person not affiliated with Owner.

D. As of the date hereof, the Building is serviced by the following providers: Verizon, AT&T/Teleport, Cogent, Time Warner Cable and Zayo.

Section 29.10. **Direct Service:** Without implying that Tenant has the right to receive any services directly from any utility provider except as expressly set forth in this Lease, with respect to the periods, if any, in which Tenant is receiving services, including, without limitation, electrical energy, steam, water or gas directly from an entity other than Owner, all metering, monitoring and documentation shall comply with all Legal Requirements including the New York City disclosure requirements, and Tenant shall provide Owner with account numbers of any accounts with any provider of such services/billing information, and any other information related thereto reasonably requested by Owner.

Section 29.11. **Access:** Tenant shall be entitled to access to the Building and the Demised Premises 24 hours per day, 7 days per week, 365 days per year, subject to the provisions of this Lease.

Section 29.12. **Class A Office Building:** Owner shall operate, manage and maintain the Building as a Class A office building, and the services expressly required to be provided hereunder shall be provided in a manner consistent with the standards of a Class A office Building in midtown Manhattan, with it agreed that wherever a specification for services is provided in this Lease, such specification shall meet such requirement.

Section 29.13. **Security:** Owner shall provide a security system for the Building comparable to the present security system in the Building, with Owner’s right to modify or eliminate such system from time to time to be comparable to security systems (or lack thereof) then in operating in other similar Class A office buildings in mid-town Manhattan. Owner shall initially issue card keys to Tenant’s employees in connection with Tenant’s initial occupancy of the Demised Premises at Owner’s cost and expense; Tenant shall pay Owner for the reasonable cost to replace any lost card keys and for card keys issued for new employees.
ARTICLE 30

TABLE OF CONTENTS, ETC.

Section 30.01. Table of Contents/Captions: The Table of Contents and the captions following the Articles and Sections of this Lease have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provision of this Lease.

ARTICLE 31

MISCELLANEOUS DEFINITIONS, SEVERABILITY AND INTERPRETATION PROVISIONS

Section 31.01. The term “business days” as used in this Lease shall exclude Saturdays, Sundays and holidays, the term “Saturdays” as used in this Lease shall exclude holidays and the term “Holidays” as used in this Lease shall mean all days observed as legal holidays by either the New York State Government or the Federal Government. The term “Rudin Building” shall mean a building owned or managed by an entity of which at least fifty (50%) percent is owned or controlled, either by voting rights, contract or otherwise, by the families of Samuel Rudin, his brothers and sisters, the lineal descendants of any of the foregoing, including Jack Rudin, his children and the children of Lewis Rudin, deceased and/or the spouses of any such persons and/or any corporation, partnership, business entity or trust established for the benefit of or controlled by the foregoing persons.

Section 31.02. The terms “person” and “persons” as used in this Lease shall be deemed to include natural persons, firms, corporations, associations and any other private or public entities, whether any of the foregoing are acting on their own behalf or in a representative capacity.

Section 31.03. The term “prime rate” shall mean the rate of interest announced publicly by JPMorgan Chase Bank, or its successor, from time to time, as JPMorgan Chase Bank’s or such successor’s base rate, or if there is no such base rate, then the rate of interest charged by JPMorgan Chase Bank or its successor to its most credit worthy customers on commercial loans having a ninety (90) day duration.

Section 31.04. If any term, covenant or condition of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term, covenant or condition shall not be affected thereby. Whenever pursuant to this Lease Owner exercises any right given to it to approve or disapprove any matter, or any arrangement or term is to be satisfactory to Owner, the decision of Owner shall (except as is otherwise specifically herein provided) be in the sole discretion of Owner.

Section 31.05. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. In the event of any action, suit, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease and no such deletion or strike out shall be entered into evidence in any such action, suit or dispute or proceeding given any weight therein.

Section 31.06. Legal Event/Bankruptcy Event/Default Situation: A. Notwithstanding anything contained in this Lease to the contrary, in each instance in this Lease where (i) any Owner’s rights or Tenant’s obligations arise or are applicable because of a Default Situation (as hereinafter defined), and/or (ii) any Tenant’s rights are conditioned upon the absence of a Default Situation, then in each such instance, a Legal Event (as hereinafter defined) and a Bankruptcy Event (as hereinafter defined) shall also be considered a Default Situation upon which such Owner’s rights or Tenant’s obligations arise or are applicable or such rights of Tenant are conditioned, as the case may be.

B. As used herein, (i) the term “Legal Event” shall mean that at the relevant point in time there shall be (x) a default by Tenant in the payment of any Fixed Rent, any increases thereto, and any other additional rent or other sums and charges then due Owner under this Lease, or in the performance or observance of any of the non-monetary terms and conditions of this Lease on Tenant’s part to be observed and performed, and (y) a prohibition on Owner, by virtue of Legal Requirements, including without limitation, those in the nature of the “automatic stay” provisions which are applicable to a Bankruptcy Event, which either prevents Owner from delivering a notice to Tenant demanding Tenant’s performance under this Lease or prevents Owner from delivering a notice to Tenant stating that Tenant is in default of its obligations under this Lease, (ii) the term “Bankruptcy Event” shall mean that at the relevant point in time Tenant shall be voluntarily seeking or involuntarily being required to seek any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or law or any other present or future applicable federal, state or other statute, and (iii) the term “Default Situation” shall mean (xx) an Event of Default (whether expressed as an Event of Default or as a default by Tenant under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed beyond the expiration of the applicable notice and grace period) and/or (yy) a default by Tenant under any of the terms, covenants or conditions of this Lease on Tenant’s part to be observed or performed.

Section 31.07. Authority of Managing Agent: A. Unless Owner shall render written notice to Tenant to the contrary in accordance with the provisions of Article 27 hereof, Rudin Management Company, Inc., acting as the agent of Owner shall have the following authority:

(i) Rudin Management Company, Inc., by anyone holding one of the “Specified Offices of Rudin Management Company, Inc.” (as defined herein) is authorized on behalf of and as the agent of Owner to (x) execute and deliver any and all lease documents affecting the Real Property, including without limitation, all leases, licenses, lease and license modification agreements, amendments, consents, termination agreements, surrender agreements, stipulations and other like agreements and instruments regarding the use or occupancy of the Real Property
(collectively, the “Lease Documents”) and (y) commence and prosecute to completion, disposition or settlement any and all actions, causes of actions, claims or proceedings necessary to enforce the terms and provisions of any Lease Documents, including, without limitation, the execution of all pleadings, petitions and instruments in connection therewith (an “Enforcement Prosecution”); and

(ii) Rudin Management Company, Inc., by any officer thereof, is authorized on behalf of and as the agent of Owner to execute and deliver all notices (including, without limitation, commencement date notices, notices of default, notices of event of default and notices of termination) contemplated by this Lease or any other Lease Documents or in connection with any of the respective rights or obligations of the parties hereunder (collectively, the “Notices”).

Any Lease Documents and Notices so executed by Rudin Management Company, Inc., in accordance with the foregoing provisions of this Section 31.07, or any such Enforcement Prosecution so conducted by Rudin Management Company, Inc. in accordance with the foregoing sentence, shall have the same force, effect and authority as if executed or conducted by Owner. Tenant acknowledges that Rudin Management Company, Inc. is acting solely as agent for Owner in connection with the foregoing and neither Rudin Management Company, Inc., nor any of its direct or indirect principals, officers, shareholders, directors or employees shall have any liability to Tenant, or any person or entities acting or claiming through or under Tenant, in connection with the performance of Owner’s obligations under this Lease and Tenant, and such person or entity, waive any and all claims against any such parties arising out of, or in any way connected with, this Lease, the Real Property, any Lease Documents, any Enforcement Prosecution or any Notices.

B. The term “Specified Offices of Rudin Management Company, Inc.” shall mean any of the following: (a) Chairman, (b) Vice-Chairman, (c) President, (d) Chief Executive Officer; (e) Executive Vice President; (f) Chief Operating Officer; (g) Chief Financial Officer; (h) Secretary; and (i) General Counsel.

C. All persons or entities to whom are delivered any such Lease Documents so executed by Rudin Management Company, Inc., or whom are subject to such Enforcement Prosecution by Rudin Management Company, Inc., in either case, by anyone holding one of the Specified Offices of Rudin Management Company, Inc. shall be entitled to rely on such Lease Documents as if such Lease Documents were executed by Owner or to recognize such Enforcement Prosecution as conducted directly by Owner. All persons or entities to whom any Notices so executed by Rudin Management Company, Inc., by an officer thereof, are given shall be entitled to rely on such Notices as if the same were executed by Owner.

Section 31.08. Execution Counterparts: This Agreement may be executed in one (1) or more multiple counterparts, each of which when taken together shall constitute one and the same instrument.

ARTICLE 32

ADJACENT EXCAVATION

Section 32.01. If an excavation shall be made upon land adjacent to the Real Property, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation license to enter upon the Demised Premises for the purpose of doing such work as said person shall deem necessary to preserve the walls and other portions of the Building from injury or damage and to support the same by proper foundations and no such entry shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner or said person.

ARTICLE 33

BUILDING RULES

Section 33.01. Tenant shall observe faithfully, and comply strictly with, and shall not permit the violation of, the Building Rules set forth in Schedule A annexed to and made a part of this Lease and such additional reasonable Building Rules as Owner may, from time to time, adopt. All of the terms, covenants and conditions of Schedule A are incorporated in this Lease by reference and shall be deemed part of this Lease as though fully set forth in the body of this Lease. The term “Building Rules” as used in this Lease shall include those set forth in Schedule A and those hereafter made or adopted as provided in this Section. In case Tenant disputes the reasonableness of any additional Building Rule hereafter adopted by Owner, the parties hereto agree to submit the question of the reasonableness of such Building Rule for decision to the Chairman of the Board of Directors of the Management Division of the Real Estate Board of New York, Inc., or its successor (the “Chairman”), or to such impartial person or persons as the Chairman may designate, whose determination shall be final and conclusive upon Owner and Tenant. Tenant’s right to dispute the reasonableness of any additional Building Rule shall be deemed waived unless asserted by service of a notice upon Owner within thirty (30) days after the date upon which Owner shall give notice to Tenant of the adoption of any such additional Building Rule. Owner shall have no duty or obligation to enforce any Building Rule, or any term, covenant or condition of any other lease, against any other tenant or occupant of the Building, and Owner's failure or refusal to enforce any Building Rule or any term, covenant or condition of any other lease against any other tenant or occupant of the Building shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Owner or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business, or otherwise. Any Building Rule not enforced generally against other office tenants of the Building who are openly and continuously violating such Building Rule shall not be enforced against Tenant. In the event of any conflict between the
provisions of this Lease and the provisions of any Building Rule, the provisions of this Lease shall govern.

Section 33.02. With respect to the Building Rules set forth on Schedule A, Owner agrees that (i) Building Rule #8 shall not prevent entry of service or guide animals, unless Owner shall have a reasonable objection with respect to such particular animal in question, or prohibit the pantry uses set forth in Article 2 of this Lease; (ii) any determination of Owner required pursuant to Building Rule #14 shall not be unreasonably withheld or delayed; and (iii) Owner’s right to prohibit advertising set forth in Building Rule #15 shall be limited to advertising which identifies the Building, and any determination of Owner required pursuant to such Building Rule #15 shall be reasonable.

ARTICLE 34

BROKER

Section 34.01. Each of Owner and Tenant represents and warrants to the other that Savills-Studley, Inc. is the sole broker with whom it has negotiated or otherwise dealt with in connection with the Demised Premises or in bringing about this Lease. Each of Owner and Tenant shall indemnify the other from all loss, cost, liability, damage and expenses, including, but not limited to, reasonable counsel fees and disbursements, arising from any breach by the indemnifying party of the foregoing representation and warranty. Owner shall pay any commission owing to Broker in connection with this transaction pursuant to a separate agreement between Owner and Broker. The terms and conditions of this Article 34 shall survive the expiration or sooner termination of this Lease.

ARTICLE 35

SECURITY

Section 35.01. Letter of Credit: (1) Tenant shall deposit with Owner, at the time of the execution and delivery of this Lease, an unconditional, irrevocable letter of credit issued by Royal Bank of Canada (referred to as the “Bank”), in favor of Owner, in the sum of FIVE HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED NINETY and 00/100 DOLLARS ($532,290.00) (referred to as the “Security Amount”) in funds available immediately or same day funds in the City of New York, as security for the faithful observance and performance by Tenant of the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed. Such letter of credit is (x) for a term of not less than one (1) year which term shall be automatically renewed for successive one (1) year terms, unless the Bank gives not less than ninety (90) days prior written notice that it will not so renew the letter of credit for such successive term and the last term of the letter of credit shall end not less than sixty (60) days after the Expiration Date and (y) in substantially the same form as Exhibit 3. If such letter of credit is not automatically renewed as aforesaid, Tenant agrees to cause the Bank to renew such letter of credit, from time to time, during the Demised Term, at least ninety (90) days prior to the expiration of said letter of credit or any renewal or replacement, upon the same terms and conditions. In the event of any transfer of said letter of credit pursuant to Section 35.05, and notice of such transfer to Tenant, Tenant, within thirty (30) days thereafter, shall cause a new letter of credit to be issued by said Bank to the transferee, upon the same terms and conditions, in replacement of the letter of credit so transferred and Owner agrees that, simultaneously with the delivery of such new letter of credit, it will return to said Bank the letter of credit being replaced. The letter of credit deposited hereunder, and all renewals and replacements, are referred to, collectively, as the “Letter of Credit.” In amplification and not in limitation of the foregoing, the Letter of Credit shall expressly provide that (i) the Letter of Credit can be drawn down by presentation of a sight draft only without any other documents or statements, (ii) partial drawings are allowed and (iii) the Letter of Credit shall be transferable by Owner, as beneficiary thereof, without restriction or limitation and with all fees paid by Tenant.

(2) The Letter of Credit shall be held by Owner for the purposes set forth in this Article and shall not be transferred except for transfer (a) to an agent for collection, or (b) pursuant to the provisions of Section 35.05. In the event Tenant defaults in the performance of its obligations to timely issue a replacement Letter of Credit, or in the observance or performance of Tenant’s agreement to cause the Bank to renew the Letter of Credit, Owner, in addition to all rights and remedies which Owner may have under this Lease or at law, shall have the right to require the Bank to make payment to Owner of the entire Security Amount or the undrawn portion thereof, as the case may be, represented by the Letter of Credit, which sum may be held by Owner as Cash Security (as said term is hereinafter defined) in accordance with the provisions of this Article. If payment of the entire Security Amount or the undrawn portion thereof is made to Owner by reason of Tenant’s failure to renew or replace the Letter of Credit in accordance with the foregoing provisions of this Article, Owner shall have the right, at any time on behalf of Tenant, to replace said Cash Security with a new Letter of Credit issued by the Bank or any other bank selected by Owner, in Owner’s sole discretion, and Tenant hereby irrevocably constitutes and appoints Owner as Tenant’s agent and attorney-in-fact to cause the Bank or any such other bank selected by Owner to issue such a replacement Letter of Credit. The Letter of Credit provides for partial drawings.

(3) Upon the occurrence of an Event of Default, or if this Lease and the Demised Term shall expire and come to an end as provided in Article 16 or by or under any summary proceeding or any other action or proceeding, or if Owner shall re-enter the Demised Premises as provided in Article 17, or by or under any summary proceeding or any other action or proceeding, then Owner, in addition to all rights and remedies which Owner may have under this Lease or at law, may from time to time, draw on the Letter of Credit in one or more drawings for the amount of any Fixed Rent or additional rent then due and for any amount then due and payable to Owner under this Lease and pay such sum to Owner’s account. In the event of a partial drawing, as provided in the immediately preceding sentence, Tenant shall, within five (5) days after demand, cause the Bank to issue an amendment to the Letter of Credit restoring the amount available thereunder to the Security Amount. In amplification and not in limitation of the provisions of this Article, a failure by Tenant to cause the Bank to timely issue an amendment to the Letter of Credit restoring the amount available thereunder to the Security Amount shall be deemed a monetary default in the payment of
Fixed Rent by Tenant under the terms, covenants and conditions of this Lease. Notwithstanding anything to the contrary set forth in this Lease, including, but not limited to, the foregoing provisions of this Article, in addition to all rights granted to Owner pursuant to the provisions of the Lease, if this Lease and the Demised Term shall expire and come to an end as provided in Article 16, or by or under any summary proceeding, or any other action or proceeding, or if Owner shall re-enter the Demised Premises as provided in Article 17, or by or under any summary proceeding or any other action or proceeding, Owner, in addition to all rights and remedies which Owner may have under this Lease or at law, shall have the right to require the Bank to make payment to Owner of the entire Security Amount or the undrawn portion thereof, as the case may be, represented by the Letter of Credit, which sum shall be held and applied by Owner as Cash Security in accordance with the provisions of this Article.

Section 35.02. Application of Cash Security: Any proceeds of the Letter of Credit held by Owner and not paid to Owner for Owner’s account as provided above shall be deemed held by Owner as Cash Security and is referred to herein as “Cash Security.” Upon the occurrence of an Event of Default, Owner may use, apply or retain the whole or any part of any Cash Security held by Owner under any of the provisions of Section 35.01, to the extent required for the payment of any Fixed Rent, additional rent or any other sum with respect to which Tenant is in default, or for the payment of any sum which Owner may expend or incur because of Tenant’s default in the observance or performance of any such term, covenant or condition, including, but not limited to, the payment of any damages or deficiency in the reletting of the Demised Premises, whether such damage or deficiency accrued before or after summary proceedings or other re-entry by Owner, without thereby waiving any other rights or remedies of Owner with respect to such default, and Owner shall hold the remainder of such Cash Security as security for the faithful performance and observance by Tenant of the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed with the same rights as hereinabove set forth to use, apply or retain all or any part of such remainder in the event of any further default by Tenant under this Lease beyond the applicable notice and grace period set forth in this Lease. Any sum held by Owner as Cash Security shall be held subject to the provisions of Section 7-103 of the General Obligations Law or any similar statute successor thereto.

Section 35.03. Restoration of Cash Security: If Owner uses, applies or retains the whole or any part of the Cash Security held by Owner under any of the provisions of Section 35.01 or 35.02, Tenant, within five (5) days after notice thereof, shall deliver to Owner, in cash or by a cashier’s check, or Tenant’s certified check, in either case drawn by or on a bank which is a member of the Clearing House Association L.L.C. and payable to the order of Owner, the sum necessary to restore the Cash Security to the Security Amount. In amplification and not in limitation of the provisions of this Lease, a failure by Tenant to so replenish the Cash Security to the Security Amount shall be deemed a monetary default by Tenant in the payment of Fixed Rent under the terms, covenants and conditions of this Lease.

Section 35.04. Return of Security: The Letter of Credit and/or any remaining portion of any Cash Security then held by Owner for the performance of Tenant’s obligations under this Lease as security shall be returned to Tenant within the Applicable Period (as hereinafter defined) after (i) the termination Date or sooner termination of this Lease pursuant to Articles 9, 10 or 11 and (ii) the full observance and performance by Tenant of all of the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed, including, but not limited to, the provisions of Article 21. As used herein, the term “Applicable Period” shall mean (x) with respect to a Letter of Credit, thirty (30) days, and (y) with respect to Cash Security, forty-five (45) days.

Section 35.05. Transfer of Letter of Credit: In the event of a sale or other transfer of the Land and/or Building, or Owner’s interest in this Lease, Owner shall transfer the Letter of Credit and/or any remaining portion of any Cash Security then held by Owner as security for the performance of Tenant’s obligations under this Lease to the transferee, and Owner shall thereupon be released from all liability for the return of such security; Tenant agrees to look solely to the transferee for the return of any such security and it is agreed that the provisions of this sentence shall apply to every sale or transfer of the Land and/or Building or Owner’s interest in this Lease by Owner named herein or its successors, and to every transfer or assignment made of any such security. Any transferee shall be deemed to have agreed that any Letter of Credit or Cash Security transferred to such transferee pursuant to this Section shall be held in accordance with the provisions of this Article for the purposes of this Article. A lease of the entire Building pursuant to which the lessee shall be entitled to collect the rents hereunder shall be deemed a transfer within the meaning of this Section.

Section 35.06. Deposit of Cash Security in Interest-Bearing Account: Subject to Owner’s right to replace the Cash Security with a new Letter of Credit in accordance with the provisions of Section 35.01, Owner agrees that, if not prohibited by law or the general policies of lending institutions in New York City, Owner shall deposit any Cash Security held by Owner in an interest-bearing savings account at a bank or banks selected by Owner, and all interest accruing thereon shall be added to and become part of such Cash Security and shall be retained by Owner under the same conditions as the principal sum held as Cash Security. Notwithstanding anything to the contrary set forth in this Article with respect to any Cash Security, Owner shall be entitled to retain the one (1%) percent administrative fee permitted by law to be retained by landlords with respect to cash security deposits.

Section 35.07. No Assignment of Security by Tenant: Tenant agrees that it will not assign, mortgage or encumber, or attempt to assign, mortgage or encumber, the Letter of Credit or any Cash Security held by Owner under this Lease, and that neither Owner nor its successors or assigns shall be bound by any such assignment, mortgage, encumbrance, attempted assignment, attempted mortgage or attempted encumbrance. Owner shall not be required to exhaust its remedies against Tenant before having recourse to the Letter of Credit, the Cash Security or any other security held by Owner. Recourse by Owner to the Letter of Credit, the Cash Security or any other security held by Owner shall not affect any remedies of Owner which are provided in this Lease or which are available in law or equity.

Section 35.08. Partial Return of Security: A. Owner has agreed that Owner shall return to Tenant the sum of ONE HUNDRED THIRTY-THREE THOUSAND SEVENTY-THREE and 00/100 DOLLARS ($133,073.00) of such security reasonably promptly following the date (referred to as the “Partial Return Date”) which is the third (3rd) anniversary of the Rent Commencement Date, provided Tenant is not then in default under any of the terms,
covenants or conditions of this Lease on Tenant’s part to be observed and performed. Accordingly, if on the Partial Return Date Tenant shall not so be in default, Tenant may replace the Letter of Credit with a Letter of Credit in a sum reduced by ONE HUNDRED THIRTY-THREE THOUSAND SEVENTY-THREE and 00/100 DOLLARS ($133,073.00). In the event that at any time Tenant shall be entitled to reduce such Letter of Credit as provided in the foregoing provisions of this Article the security shall be held as Cash Security then, in lieu of Tenant replacing any such Letter of Credit, Owner shall return sums to Tenant equal to the amount by which the Letter of Credit would have been reduced if it were in existence; however, in no event shall the Letter of Credit or Cash Security ever be reduced below the sum of THREE HUNDRED NINETY-NINE THOUSAND TWO HUNDRED SEVENTEEN and 00/100 DOLLARS ($399,217.00). The sum of FIVE HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED NINETY- and 00/100 DOLLARS ($522,900.00) referred to in the previous Sections of this Article shall be deemed reduced as the provisions of this Section 35.08 shall operate to so reduce the Letter of Credit and/or Cash Security, as the case may be.

ARTICLE 36

ARBITRATION, ETC.

Section 36.01. Any dispute (i) with respect to the reasonableness of any failure or refusal of Owner to grant its consent or approval to any request for such consent or approval pursuant to the provisions of Sections 3.01 or 11.03 with respect to which request Owner has agreed, in such Sections, not unreasonably to withhold such consent or approval, or (ii) arising out of the application of the Operating Expenses provisions of Article 23, which is submitted to arbitration shall be finally determined by expedited arbitration in the City of New York in accordance with the rules and regulations with respect to expedited commercial arbitration then obtaining of the American Arbitration Association or its successor. Any such determination shall be final and binding upon the parties, whether or not a judgment shall be entered in any court. In making their determination, the arbitrators shall not subtract from, add to, or otherwise modify any of the provisions of this Lease. Owner and Tenant may, at their own expense, be represented by counsel and employ expert witnesses in any such arbitration. Any dispute with respect to the reasonability of any failure or refusal of Owner to grant its consent or approval to any request for such consent or approval pursuant to any of the provisions of this Lease (other than Sections 3.01 and 11.03) with respect to which Owner has covenanted not unreasonably to withhold such consent or approval, and any dispute arising with respect to the increases in Fixed Rent due to the provisions of Section 23.02 shall be determined by applicable legal proceedings. If the determination of any such legal proceedings, or of any arbitration held pursuant to the provisions of this Section with respect to disputes arising under Sections 3.01 and 11.03 or the Operating Expense provisions of Article 23, shall be adverse to Owner, Owner shall be deemed to have granted the requested consent or approval, or be bound by any determination as to Taxes and Operating Expenses and the increases in Fixed Rent relating thereto, but that shall be Tenant’s sole remedy in such event and Owner shall not be liable to Tenant for a breach of Owner’s covenant not unreasonably to withhold such consent or approval, or otherwise. Each party shall pay its own counsel and expert witness fees and expenses, if any, in connection with any arbitration held pursuant to the provisions of this Section and the parties will share equally all other expenses and fees of any such arbitration.

ARTICLE 37

PARTIES BOUND

Section 37.01. The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Owner and Tenant and, except as otherwise provided in this Lease, their respective heirs, distributees, executors, administrators, successors and assigns. However, the obligations of Owner under this Lease shall no longer be binding upon Owner named herein after the sale, assignment or transfer by Owner named herein (or upon any subsequent Owner after the sale, assignment or transfer by such subsequent Owner) of its interest in the Building as owner or lessee, and in the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence. Neither the partners (direct or indirect) comprising Owner, nor the shareholders (nor any of the partners comprising same), partners, directors or officers of any of the foregoing (collectively, the “Owner’s Parties”) shall be liable for the performance of Owner’s obligations under this Lease. Tenant shall look solely to Owner to enforce Owner’s obligations hereunder and shall not seek any damages against any of the Owner’s Parties. Notwithstanding anything contained in this Lease to the contrary, Tenant shall look solely to the estate and interest of Owner, its successors and assigns, in the Real Property and Building for the collection or satisfaction of any judgment recovered against Owner based upon the breach by Owner of any of the terms, conditions or covenants of this Lease on the part of Owner to be performed, and no other property or assets of Owner or any of Owner’s Parties shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to either this Lease, the relationship of landlord and tenant hereunder, or Tenant’s use and occupancy of the Demised Premises.

ARTICLE 38
IDENTIFICATION SIGNAGE

Section 38.01 Installation of Signage: On full floors leased to Tenant, Tenant shall have the right to place Tenant’s standard signage (and the standard signage of any permitted subtenant or Permitted Occupants) in any part of the Demised Premises, subject to Owner’s prior approval (in all respects), not to be unreasonably withheld or delayed, of the location, size, design, manner of installation and materials and colors of such signage, it being agreed that such material and colors shall be consistent with the standards of a Class A office building in midtown Manhattan, City of New York. No placement of signage shall operate to grant any party any right, title or interest in the Demised Premises, and Tenant shall not include any signage identifying occupants or subtenants not permitted to occupy the Demised Premises or portion thereof. Such installations shall be performed in accordance with the terms and conditions of this Lease, including without limitation, Article 3.

Section 38.02 Removal: Any signage installed shall be considered Tenant’s Personal Property which must be removed at the end of the Demised Term pursuant to Article 21 and accordingly, Tenant shall repair any material damage to the Demised Premises or the Building in connection with such removal.

ARTICLE 39

SINGLE RENEWAL OPTION

Section 39.01 Tenant’s Renewal Option: Provided (i) provided that Tenant is not then in default (x) under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed other than the payment of Fixed Rent and increases thereto due under Article 23 of the Lease, beyond the applicable notice and grace period set forth in the Lease or (y) of the covenants to pay the Fixed Rent and increases thereto under Article 23; and (ii) Tenant and Tenant’s subsidiaries and affiliates (each as defined in Section 11.05), in contradistinction to any other subtenants or occupants, shall then be in occupancy of seventy-five percent (75%) of the Demised Premises with it understood that any space leased under this Lease which has been removed or eliminated from the Demised Premises pursuant to the provisions of Section 11.03 shall be deemed leased to Tenant under this Lease for the purposes of this Section 39.01, Tenant shall have the single option to renew this Lease and the Demised Term for a single renewal term (referred to as the “Renewal Term”) of five (5) years commencing on the date immediately following the Expiration Date (the “Renewal Term Commencement Date”) and ending, unless sooner terminated pursuant to the terms, covenants and conditions of this Lease or pursuant to law, on the last day of the calendar month in which the day immediately preceding the fifth (5th) anniversary of the Renewal Term Commencement Date shall occur. If Tenant exercises such option in accordance with the provisions and limitations of this Article, this Lease and the Demised Term shall be renewed for the Renewal Term at a Fixed Rent equal to the fair market annual rental value of the Demised Premises as of the commencement date of the Renewal Term as agreed by the parties or determined in accordance with the provisions of Section 39.03, but otherwise upon the same then executory terms, covenants and conditions as the original Demised Term, including the definitions of Owner’s Basic Tax Liability set forth in Section 23.01D and the Base Escalation Year set forth in Section 23.01G.

Section 39.02 Tenant’s Exercise of Option: The option set forth in Section 39.01 may only be exercised by notice given by Tenant to Owner on or prior to the date which is twelve (12) months immediately preceding the Renewal Term Commencement Date. Time is of the essence with respect to the exercise of such option. Tenant shall not have the right to give any such notice after the date determined pursuant to this Section 39.02, and any notice given after said applicable date purporting to exercise such option shall be void and of no force or effect.

Section 39.03 Determination of Fair Market Rental Value: In the event that Tenant shall have exercised the right to renew this Lease and thereafter Owner and Tenant are unable to agree, within sixty (60) days after commencement of discussions thereon, as to the fair market annual rental value of the Demised Premises for the Renewal Term pursuant to Section 39.01, then, upon the demand of either Owner or Tenant, such fair market annual rental value shall be determined by arbitration as follows:

(a) Within thirty (30) days after notice by either party requesting arbitration of the issue (i) the parties shall agree upon a single arbitrator to determine such fair market annual rental value and (ii) each party shall simultaneously deliver to the other on a certain date reasonably agreed upon between Owner and Tenant within such thirty (30) day period a determination (referred to as the “Fair Market Determination”) of what it believes is the fair market annual rental value of the Demised Premises as of the commencement of the Renewal Term. If Owner and Tenant shall have failed to agree upon such single arbitrator within such period of thirty (30) days, then such single arbitrator shall be appointed by the American Arbitration Association, or its successor pursuant to its rules for commercial matters, or if at such time such association is not in existence and has no successor, then by the presiding Justice of the Appellate Division, First Department, of the Supreme Court of the State of New York, or any successor court, upon request of either Owner or Tenant, as the case may be.

(b) Within ten (10) business days following the selection or appointment of the single arbitrator each party shall deliver to such arbitrator such party’s Fair Market Determination.

(c) The arbitrator to be selected, or appointed as above provided, as the case may be, shall be a duly licensed real estate appraiser or broker having at least fifteen (15) years of experience in such field in the Borough of Manhattan, City of New York and who is not employed by any company which is an affiliate or subsidiary of Owner or Tenant.

(d) The arbitrator, selected or appointed as aforesaid,
forthwith shall determine the issue and render its decision as promptly as practicable choosing either Owner’s or Tenant’s Fair Market Determination, based on which one the arbitrator believes is closest to as to the fair market annual rental value of the Demised Premises for the Renewal Term pursuant to Section 39.01 and if only one (1) party submits a Fair Market Determination to the arbitrator then the arbitrator shall choose the Fair Market Determination so submitted. The decision of such arbitrator shall be in writing and shall be final and binding upon Owner and Tenant whether or not a judgment shall be entered in any court. Duplicate original counterparts of such decision shall be sent by the arbitrator to both Owner and Tenant.

(e) The arbitrator, in arriving at its decision as to which Fair Market Determination to accept, shall consider all relevant factors and be entitled to consider all testimony and documentary evidence which may be presented at any hearing as well as facts and data which the arbitrator may discover by investigation and inquiry outside of such hearings. The arbitrator shall be bound by the provisions of this Lease and shall not add to, subtract from, or otherwise modify such provisions. The cost and expense of such arbitration shall be borne equally by Owner and Tenant, except that each party shall pay its own counsel fees and expenses.

(f) If the determination of the Fixed Rent for the Renewal Term has not been made by the commencement of the Renewal Term, Tenant, until such determination, shall continue to pay scheduled Fixed Rent in an amount equal to the scheduled Fixed Rent payable with respect to the period immediately prior to the Renewal Term Commencement Date (as the same may have been escalated pursuant to the provisions of this Lease) before any abatement or apportionment thereof, and following such determination Tenant shall pay to Owner, upon demand, any additional sums due to Owner as a result of such determination, or Owner shall credit Tenant, against the next installments of Fixed Rent, the amount by which the sums paid by Tenant with respect to the Renewal Term prior to such determination exceed the Fixed Rent as determined by arbitration with respect to such period, as applicable.

Section 39.04. Condition of Demised Premises. Tenant agrees to accept the Demised Premises in the condition which shall exist on the commencement date of the Renewal Term “as is” and further agrees that Owner shall have no obligation to perform any work or make any installations in order to prepare the Demised Premises for Tenant’s continued occupancy.

Section 39.05. Confirmation of Exercise of Tenant’s Renewal Right. Tenant, upon request of Owner, from time to time, will execute and deliver to Owner an instrument in form reasonably satisfactory to Owner stating whether or not Tenant has exercised Tenant’s right to renew pursuant to the provisions of Section 39.01 and, if Tenant has exercised any such right, setting forth the Fixed Rent for the Renewal Term. However, failure of Owner to request the execution and delivery of any such instrument or failure of Tenant to execute and deliver such instrument shall not vitiate the foregoing provisions of this Article.

ARTICLE 40

TENANT’S RIGHT OF FIRST OFFER FOR ADDITIONAL SPACE

Section 40.01. Tenant’s First Offer Right. Provided that (a) Tenant is not then in default (x) under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed other than the payment of Fixed Rent and increases thereto due under Article 23 of the Lease, beyond the applicable notice and grace period set forth in the Lease or (y) of the covenants to pay the Fixed Rent and increases thereto under Article 23; and (b) Tenant and Tenant’s subsidiaries and affiliates (each, as defined in Section 11.05), in contradistinction to any other subtenants or occupants, shall then be in occupancy of eighty percent (80%) of the Demised Premises (for the purposes of this Article 40 any space leased to Tenant under this Lease which has been eliminated from the Demised Premises pursuant to Section 11.03 shall be deemed space leased to Tenant under this Lease) then Tenant shall have the right (sometimes referred to herein as “Tenant’s First Offer Right”), subject to the provisions of this Article, exercisable in accordance with the provisions of Section 40.02, to lease and add to the Demised Premises any space on the twenty-first (21st) floor, the twenty-third (23rd) floor and the thirty-first (31st) floor of the Building (each such space is referred to herein as an “Additional Space”), if (x) with respect to any space on the twenty-first (21st) floor of the Building, after the initial leasing by Owner of such Additional Space after the date hereof, it becomes “available for leasing” during the Demised Term and (y) with respect to any space on the twenty-first (21st) floor and/or thirty-first (31st) floor, it becomes “available for leasing” during the Demised Term. Tenant acknowledges that Owner may initially lease any Additional Space on the twenty-first (21st) floor for whatever term, and upon all other terms, covenants and conditions, and to whomever it desires in Owner’s sole judgment. No Additional Space shall be deemed “available for leasing” if (a) the then tenant of the Additional Space or any assignee, successor, subtenant or other occupant holding through or under such tenant, shall enter into (i) any agreement with Owner extending the letting agreement affecting the Additional Space or (ii) any new lease with Owner affecting the Additional Space, or (b) any other tenant in the Building or any assignee or successor of such other tenant shall exercise any contractual option or right which it has, as of the date hereof, to lease the Additional Space (whether the Additional Space in question is specifically referred to in any such contractual option or right or Owner must utilize such Additional Space in question in order to satisfy such contractual option or right). Notwithstanding the foregoing provisions of this Section 40.01, Tenant shall not have the right to lease and add to the Demised Premises the Additional Space pursuant to Tenant’s First Offer Right which becomes available for leasing if, the Expected Vacancy Date (as defined in Section 40.02A) as set forth in Owner’s Availability Notice (as defined in Section 40.02A) is later than the date four (4) years immediately preceding the then current Expiration Date of this Lease.

Section 40.02. Notice of Availability and Tenant’s Exercise of Option. A. In the event that the Additional Space shall become or become available for leasing in accordance with the provisions of Section 40.01, Owner shall give notice thereof to Tenant (any such notice is referred to as an “Owner’s Availability Notice”), which Owner’s Availability Notice shall contain the date such Additional Space is expected to be vacant or available for leasing and which Owner’s Availability Notice shall be accompanied by a floor plan of the Additional Space.
unless it is a full floor. Owner’s Availability Notice may be given not more than eighteen (18) and no less than two (2) months prior to the date set forth in such Owner’s Availability Notice upon which such Additional Space is expected to become vacant and available for leasing (the date set forth in Owner’s Availability Notice on which such Additional Space is expected to become available for leasing is sometimes referred to as an “Expected Vacancy Date”). Upon Owner giving Tenant an Owner’s Availability Notice, Tenant may exercise Tenant’s First Offer Right only by notice given to Owner within fifteen (15) days next following the date of the giving of such Owner’s Availability Notice, and by giving such notice Tenant shall thereby lease and add such Additional Space to the Demised Premises for a term to begin, subject to Section 40.03, on the Expected Vacancy Date; any notice given by Tenant to Owner exercising such Tenant’s First Offer Right is referred to as “Tenant’s First Offer Notice”.

B. It is understood and agreed that “time is of the essence” with respect to Tenant’s exercise of its Tenant’s First Offer Right pursuant to this Article and that if Tenant does not exercise such Tenant’s First Offer Right within the aforesaid time limitation set forth in Subsection A above, any notice purporting to exercise such Tenant’s First Offer Right given after the expiration of such time limitation shall be void and of no force and effect and Tenant shall have no further right to lease and add the Additional Space in question to the Demised Premises.

C. If Tenant exercises Tenant’s First Offer Right in accordance with the provisions of this Article 40, then the Additional Space shall be leased by Tenant and added to the Demised Premises upon all of the then executory terms, covenants and conditions as are contained in this Lease, except as otherwise set forth herein, adjusted to reflect (x) the number of rentable square feet contained in the applicable Additional Space, and (y) that the term applicable to the Additional Space in question shall, commence on the Expected Vacancy Date, as the same may be accelerated or delayed pursuant to the provisions of Section 40.03.

Section 40.03. A. Acceleration of Expected Vacancy Date: In the event that the Additional Space shall become available for leasing sooner than the Expected Vacancy Date because of the termination of the term of the lease or occupancy affecting such Additional Space due to the default of such tenant or occupant, Owner shall have the right to accelerate the Expected Vacancy Date to such sooner date upon not less than thirty (30) days’ notice to Tenant.

B. Holdover Occupant: Owner and Tenant acknowledge the possibility that all or any of the tenants or occupants of the Additional Space may not have vacated and surrendered the Additional Space to Owner by the Expected Vacancy Date. Accordingly, notwithstanding anything to the contrary contained in Sections 40.01 or 40.02 or in any Owner’s Availability Notice, if such tenants or occupants shall not have vacated and surrendered the Additional Space to Owner by the Expected Vacancy Date, then (a) the term applicable to the Additional Space shall commence (i) on the Expected Vacancy Date with respect to those portions, if any, of the Additional Space which are vacant and surrendered on the applicable Expected Vacancy Date, and (ii) with respect to those portions, if any, of the Additional Space which are not vacant and surrendered on the Expected Vacancy Date, on the respective later date or dates upon which such portions of the Additional Space become vacant and Owner gives notice to Tenant of such vacany, and (b) the increases in Fixed Rent, the Demised Premises Area and all other portions of this Lease resulting from the application of the provisions of this Article 40 shall be equitably adjusted to reflect the fact that all or any portions of the Additional Space have not been leased and added to the Demised Premises on the Expected Vacancy Date but are leased and added to the Demised Premises on a date or dates after the Expected Vacancy Date.

C. Lease Not Affected: In the event that the provisions of this Section 40.03 shall apply, then, the parties agree that (a) the Expiration Date shall not be affected by operation of the provisions of this Section 40.03; (b) except as expressly set forth in this Section 40.03, neither the validity of this Lease nor the obligations of Tenant under this Article 40 shall be affected by operation of the provisions of this Section 40.03; (c) Tenant waives any rights under Section 223-a of the Real Property Law of New York or any successor statute of similar import to rescind this Lease or such Tenant’s exercise of Tenant’s First Offer Right and further waives the right to recover any damages against Owner which may result from the failure of Owner to deliver possession of the Additional Space on the Expected Vacancy Date; and (d) Owner shall institute at no cost or expense to Tenant, within thirty (30) days after the Expected Vacancy Date set forth in Owner’s Availability Notice, appropriate proceedings against any such Additional Space tenants or occupants who have not vacated and surrendered all or any portion of the Additional Space in order to obtain possession thereof, and shall prosecute such proceedings to completion with reasonable diligence at no cost or expense to Tenant.

D. Cancellation of Exercise of Tenant’s First Offer Right: (1) If any tenants or occupants of any portion of any Additional Space shall fail to vacate or surrender the same on or before the date (each such date being referred to herein as an “Additional Space Cancellation Date”) twenty-four (24) months following the Expected Vacancy Date applicable to such Additional Space, then, notwithstanding anything contained in this Article 40 to the contrary, Tenant shall have the right, by notice given to Owner on or prior to the date which is five (5) days next following the Additional Space Cancellation Date applicable to portion of the Additional Space in question, to cancel Tenant’s exercise of Tenant’s First Offer Right with respect to such portion of the Additional Space in question. In the event that such cancellation notice is given, then Tenant’s exercise of Tenant’s First Offer Right with respect to that portion of the Additional Space not then previously delivered shall be deemed cancelled, provided however that all of Tenant’s other rights and obligations under this Lease.

(2) “Time is of the essence” with respect to the giving by Tenant to Owner of any cancellation notice pursuant to the immediately preceding paragraph, and in the event that Tenant shall fail to give any such cancellation notice on or prior to the date which is five (5) days next following the applicable Additional Space Cancellation Date, any notice given by Tenant to Owner after said date purporting to exercise such right of cancellation shall be deemed of no force and effect, and the Demised Term shall commence with respect to the portion of the Additional Space in question, in accordance with the provisions of this Article 40. Tenant’s
Section 40.04. **Modification of Lease - Inclusion of the Additional Space:** In the event that Tenant shall timely exercise its First Offer Right with respect to any portion of any Additional Space, this Lease shall be deemed modified as follows:

A. The Demised Premises shall include the Additional Space (together with all appurtenances, fixtures, improvements, additions and other property attached thereto or installed therein) and the monthly installments of the Fixed Rent shall each be increased accordingly to conform with the foregoing. In the event that the term applicable to the Additional Space shall commence on a date other than the first day of any month, the monthly installment of the Fixed Rent for the month during which the term applicable to the Additional Space shall occur shall be increased pro rata to reflect such increase in the Fixed Rent;

B. The Fixed Rent reserved in this Lease shall be increased by the fair market annual rental value of the Additional Space as of the commencement date of the term applicable thereto “as is” and further agrees that Owner shall have no obligation to perform any work or make any installations in order to prepare the Additional Space for Tenant’s occupancy.

Section 40.05. **Condition of Additional Space:** Tenant agrees to accept the Additional Space in the condition which shall exist on the commencement date of the term applicable thereto “as is” and further agrees that Owner shall have no obligation to perform any work or make any installations in order to prepare the Additional Space for Tenant’s occupancy.

Section 40.06. **Determination of Fair Market Rental Value:** In the event that Tenant shall have exercised the right to lease Additional Space and thereafter Owner and Tenant are unable to agree, within sixty (60) days after commencement of discussions thereon, as to the fair market annual rental value of the Additional Space, then, upon the demand of either Owner or Tenant, such fair market annual rental value shall be determined by arbitration as follows:

(a) Within thirty (30) days after notice by either party requesting arbitration of the issue the parties shall agree upon a single arbitrator to determine such fair market annual rental value and, if unable to do so, the parties shall simultaneously deliver to the other a certain date reasonably agreed upon between Owner and Tenant within such thirty (30) day period a determination (each a “ROFO Fair Market Determination”) of what it believes is the fair market annual rental value of the Additional Space as of the commencement of the term with respect thereto. If Owner and Tenant shall have failed to agree upon such single arbitrator within such period of thirty (30) days, then such single arbitrator shall be appointed by the American Arbitration Association, or its successor pursuant to its rules for commercial matters, or if at such time such association is not in existence and has no successor, then by the presiding Justice of the Appellate Division, First Department, of the Supreme Court of the State of New York, or any successor court, upon request of either Owner or Tenant, as the case may be.

(b) Within ten (10) business days following the selection or appointment of the single arbitrator each party shall deliver to such arbitrator such party’s ROFO Fair Market Determination.

(c) The arbitrator to be selected, or appointed as above provided, as the case may be, shall be a duly licensed real estate appraiser or broker having at least fifteen (15) years of experience in such field in the Borough of Manhattan, City of New York and who is not employed by any company which is an affiliate or subsidiary of Owner or Tenant.

(d) The arbitrator, selected or appointed as aforesaid, forthwith shall determine the issue and render its decision as promptly as practicable choosing either Owner’s or Tenant’s ROFO Fair Market Determination, based on which one the arbitrator believes is closest to the fair market annual rental value of the Additional Space, and if only one (1) party submits a ROFO Fair Market Determination to the arbitrator then the arbitrator shall choose the ROFO Fair Market Determination so submitted. The decision of such arbitrator shall be in writing and shall be final and binding upon Owner and Tenant whether or not a judgment shall be entered in any court. Duplicate original counterparts of such decision shall be sent by the arbitrator to both Owner and Tenant.

(e) The arbitrator, in arriving at its decision as to which ROFO Fair Market Determination to accept, shall consider all relevant factors and be entitled to consider all testimony and documentary evidence which may be presented at any hearing as well as facts and data which the arbitrator may discover by investigation and inquiry outside of such hearings. The arbitrator shall be bound by the provisions of this Lease and shall not add to, subtract from, or otherwise modify such provisions. The cost and expense of such arbitration shall be borne equally by Owner and Tenant, except that each party shall pay its own counsel fees and expenses.

(f) If the determination of the Fixed Rent payable with respect to the Additional Space has not been made by the commencement of the term applicable to the Additional Space, Tenant, until such determination, shall pay for the Additional Space as the same scheduled Fixed Rent per square foot then allocable to the original portion of the Demised Premises (as the same may have been escalated pursuant to the
provisions of this Lease) before any abatement or apportionment thereof, and following such determination Tenant shall pay to Owner, upon demand, any additional sums due to Owner as a result of such determination or Owner shall credit Tenant, against the next installments of Fixed Rent, the amount by which the sums paid by Tenant with respect to the Additional Space prior to such determination exceed the Fixed Rent as determined by arbitration with respect to such Additional Space, as applicable.

Section 40.07. Confirmation of Tenant’s Exercise of Option: Upon demand of Owner, Tenant will execute and deliver to Owner an instrument in form satisfactory to Owner stating whether or not Tenant has exercised any option contained in this Article and if Tenant has exercised such option setting forth the effective commencement date of the term applicable to the Additional Space in question and the Fixed Rent applicable to the Additional Space in question. However, neither the failure of Owner to demand the execution and delivery of such instrument nor the failure of Tenant to execute and deliver such instrument shall vitiate the provisions of this Article.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]
IN WITNESS WHEREOF, Owner and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

OWNER

BROADWAY 52ND L.P.

By: Rudin Management Co., Inc., as Agent

By: ______________________________________
Name:
Title:

TENANT

BANKRATE, INC.

By: ______________________________________
Name:
Title:

00326697.6

2
CERTIFICATE OF ACKNOWLEDGMENT

STATE OF 
COUNTY OF

) s.s.:

On the day of in the year 2016, before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____________________________
Notary Public

SCHEDULE A
BUILDING RULES

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises demised to any tenant or occupant. Any tenant whose premises are situate on the ground floor of the Building shall, at said tenant’s own expense, keep the sidewalks and curb directly in front of said premises clean and free from ice and snow.

2. No awnings or other projections shall be attached to the outside walls or windows of the Building without the prior consent of Owner. No curtains, blinds, shades, or screens shall be attached to or hung in, or used in connection with, any window or door of the premises demised to any tenant or occupant, without the prior consent of Owner. Such awnings, projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in a manner, approved by Owner.

3. No sign, advertisement, object, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of the outside or inside of the premises demised to any tenant or occupant or of the Building without the prior consent of Owner. Interior signs on doors and directory tablets, if any, shall be of a size, color and style approved by Owner.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed, nor shall any bottles, parcels, or other articles be placed on any window sills.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors, vestibules or other public parts of the Building.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown therein. No tenant shall bring or keep, or permit to be brought or kept, any inflammable, combustible or explosive fluid, material, chemical or substance in or about the premises demised to such tenant.

7. No tenant or occupant shall mark, paint, drill into, or in any way deface any part of the Building or the premises demised to such tenant or occupant. No boring, cutting or stringing of wires shall be permitted, except with the prior consent of Owner, and as Owner may direct. No tenant or occupant shall install any resilient tile or similar floor covering in the premises demised to such tenant or occupant except in a manner approved by Owner.

8. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about the premises demised to any tenant. No cooking shall be done or permitted in the Building by any tenant without the approval of Owner. No tenant shall cause or permit any unusual or objectionable odors to emanate from the premises demised to such tenant.

9. No space in the Building shall be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction.

10. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with other tenants or occupants of the Building or neighboring buildings or premises whether by the use of any musical instrument, radio, television set or other audio device, unmusical noise, whistling, singing, or in any other way. Nothing
shall be thrown out of any doors or windows.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows, nor shall any changes be made in locks or the mechanism thereof. Each tenant must, upon the termination of its tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such tenant.

12. All removals from the Building, or the carrying in or out of the Building or the premises demised to any tenant, of any safes, freight, furniture or bulky matter of any description must take place at such time and in such manner as Owner or its agents may determine, from time to time. Owner reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of the Building Rules or the provisions of such tenant’s lease.

13. No tenant shall use or occupy, or permit any portion of the premises demised to such tenant to be used or occupied, as an office for a public stenographer or typist, or as a barber or manicure shop, or as an employment bureau. No tenant or occupant shall engage or pay any employees in the Building, except those actually working for such tenant or occupant in the Building, nor advertise for laborers, giving an address at the Building.

14. No tenant or occupant shall purchase spring water, ice, food, beverage, lighting maintenance, cleaning, towels, or other like service, from any company or persons not approved by Owner, such approval not unreasonably to be withheld.

15. Owner shall have the right to prohibit any advertising by any tenant or occupant which, in Owner’s opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon notice from Owner, such tenant or occupant shall refrain from or discontinue such advertising.

16. Owner reserves the right to exclude from the Building, between the hours of 6 P.M. and 8 A.M. on business days and at all hours on Saturdays, Sundays and holidays, all persons who do not present a pass to the Building signed by Owner. Owner will furnish passes to persons for whom any tenant requests such passes. Each tenant shall be responsible for all persons for whom it requests such passes and shall be liable to Owner for all acts of such persons.

17. Each tenant, before closing and leaving the premises demised to such tenant at any time, shall see that all entrance doors are locked and all windows closed.

18. Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Owner’s agents, contractors and employees while performing janitorial or other cleaning services and making repairs or alterations in said premises.

19. No premises shall be used, or permitted to be used, for lodging or sleeping or for any immoral or illegal purpose.

20. The requirements of tenants will be attended to only upon application at the office of Owner. Building employees shall not be required to perform, and shall not be requested by any tenant or occupant to perform, any work outside of their regular duties, unless under specific instructions from the office of Owner.

21. Canvassing, soliciting and peddling in the Building are prohibited and each tenant and occupant shall cooperate in seeking their prevention.

22. There shall not be used in the Building, either by any tenant or occupant or by their agents or contractors, in the delivery or receipt of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as Owner may require.

23. If the premises demised to any tenant become infested with vermin, such tenant, at its sole cost and expense, shall cause its premises to be exterminated, from time to time, to the satisfaction of Owner, and shall employ such exterminators therefor as shall be approved by Owner.

24. No premises shall be used, or permitted to be used, at any time, as a store for the sale or display of goods, wares or merchandise of any kind, or as a restaurant, shop, booth, bootblack or other stand, or for the conduct of any business or occupation which predominantly involves direct patronage of the general public in the premises demised to such tenant, or for manufacturing or for other similar purposes.

25. No tenant shall clean, or permit to be cleaned, any window of the Building from the outside in violation of Section 202 of the New York Labor Law or any successor law or statute, or of the rules of the Board of Standards and Appeals or of any board or body having or asserting jurisdiction.

26. No tenant shall move, or permit to be moved, into or out of the Building or the premises demised to such tenant, any heavy or bulky matter, without the specific approval of Owner. If any such matter requires special handling, only a person holding a Master Rigger’s license shall be employed to perform such special handling. No tenant shall place, or permit to be placed, on any part of the floor or floors of the premises demised to such tenant, a load exceeding the floor load per square foot which such floor was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of safes and other heavy matter, which must be placed so as to distribute the weight.

SCHEDULE B
A. General Cleaning of Demised Premises (unless otherwise indicated, General Cleaning Services are to be performed nightly):
   1. Sweep all flooring; dust all flooring exclusive of carpeted areas.
   2. Vacuum all carpeted areas and rugs; moving light furniture other than desks, file cabinets, etc.
   3. Sweep any private stairways or vacuum if carpeted.
   4. Empty all wastepaper baskets, receptacles, etc. and damp dust as necessary.
   5. Remove waste paper to a designated area or areas.
   6. Dust and wipe clean all furniture, fixtures within hand-high reach, and window sills.
   7. Clean all glass furniture tops.
   8. Dust all chair rails, trim, etc. within hand-high reach.
   9. Dust all baseboards.
  10. Wash clean all water fountains.
  11. Keep Building employees’ locker rooms, if any, and slop sink rooms in clean and orderly condition.

B. Core Lavatories - Nightly:
   1. Sweep and wash all flooring.
   2. Wash and polish all mirrors, powder shelves, bright work, etc., including flushometers, piping and toilet seat hinges.
   3. Wash both sides of all toilet seats.
   4. Wipe clean all toilet tissue, soap, towel and sanitary napkin dispensers.
   5. Wash all basins, bowls and urinals, and disinfect.
   6. Dust all partitions, tile walls, dispensers and receptacles.
   7. Empty and clean paper towel and sanitary napkin disposal receptacles.
   8. Remove waste paper and refuse to a designated area or areas.
   9. Fill toilet tissue holders, soap dispensers and towel dispensers (toilet tissue to be furnished by Owner or its contractor, other materials to be furnished by tenants).

C. Building Entrances - Nightly:
   1. Sweep and wash flooring.
   2. Wash all rubber mats.
   3. Clean all cigarette urs and replace sand or water necessary (sand to be furnished by Owner or its contractors).
   4. Wash and wax floors in elevator cabs, or vacuum clean if carpeted.
   5. Dust and rub down walls, metal work and saddles in elevator cabs.
   6. Dust and rub down all elevator doors, mail chutes and mail depository.

D. High Dusting - Office areas in Demised Premises (to be performed approximately every three months):
   1. Dust all pictures, frames, charts, graphs and similar wall hangings not reached in nightly cleaning.
   2. Dust all vertical surfaces such as walls, partitions, ventilating louver, fresh air grills and others not reached in nightly cleaning.
   3. Dust exterior of all lighting fixtures.
   4. Damp wipe all venetian blinds.
5. Dust all windows frames.

E. Periodic Cleaning - Office Areas in Demised Premises (unless otherwise indicated);

1. Wipe clean all interior metal as necessary.
2. Elevator, stairway, office and utility doors to be checked for general cleanliness as necessary, removing
fingermarks.
3. Dust all louvers and other ventilating louvers within hand-high reach weekly.
4. Remove all fingermarks, smudges and other marks from metal partitions and other surfaces as necessary.

F. Day Services - Duties of Day Porters (to be performed daily);

1. Police entire elevator lobby areas of Building.
2. Police elevator cabs.
3. Set out rubber mats in elevator lobby areas of Building on rainy days; keep mats in clean condition.
4. Sweep and hose sidewalks, weather permitting; remove snow when necessary.
5. Keep frames of entrance reception doors of Building in clean condition.
6. Sweep and dust all Building stairways and fire towers; dust all handrails, newels and stair stringers.
7. Exterior metal work and marble of Building entrances to be kept in clean condition at all times.

G. Window Cleaning:

1. Clean all windows, inside including interior sills and frames, and outside, 4 times per year, subject to
delays occasioned by inclement weather.
2. Clean Building entrance doors daily.
3. Clean Building entrance lobby glass weekly.
4. Clean glass in Building directory daily.
5. Clean mail chute glass as necessary.

H. All services required to be furnished “nightly” shall be furnished only during regular cleaning hours for the
Building (generally between 6:00 P.M. and 6:00 A.M.) on Mondays through Fridays only, exclusive of holidays
as defined in Article 31. All services required to be furnished “daily” shall be furnished only during the hours
between 8:00 A.M. and 6:00 P.M., on Mondays through Fridays only, exclusive of holidays as defined in Article
31.

Tenant agrees that Owner may substitute, for any of the methods or devices set forth in this Schedule B, other methods or
devices which will achieve substantially the same results.

EXHIBIT 1

Form of Priority Filing Letter

Broadway 52\textsuperscript{nd} L.P.
345 Park Avenue
New York NY 10154

Re: 1675 Broadway

Ladies & Gentlemen:

We are requesting your authorization, as owner of the captioned building, to file the plan / work applications attached
herewith under the New York City Department of Buildings Priority Application Filing procedures. We understand that
the Department of Buildings approval of this application is predicated on the certification of a professional architect that
the filed application is complete and in accordance with all applicable codes and laws. We have retained professional
architect and he has signed the enclosed certification to this effect pursuant to the requirements of the Department of Buildings.

In the event that the Department of Buildings requires any remedial measures to be taken in connection with the filing of
the plans or the performance of such work, we will immediately take such remedial measure at our cost and expense or in
the alternative, at your option, we will promptly reimburse you for any reasonable out of pocket costs and expenses for
taking such remedial measures on our behalf(s) as to meet the requirements of the Department of Buildings.
EXHIBIT 2

HVAC Spec

Summer conditions:
Indoor temperature 76 degrees F ± 2 degrees F, d.b. 50% R.H. with outdoor conditions not to exceed 90 degrees F, d.b. and 73 degrees F, w.b.

Winter conditions:
Indoor temperature 70 degrees F ± 2 degrees F, d.b. with outdoor temperature 15 degrees F, or higher

The above conditions can be met with a maximum population of one person per one hundred sq. ft. of usable area and an electrical load of 4 watts per useable sq. ft.

EXHIBIT 3

Form of Letter of Credit

[BANK LETTERHEAD]

Broadway 52nd L.P.
c/o Rudin Management Co. Inc.
345 Park Avenue
New York, New York 10154
Attention: Ms. Roslyn Stuart

RE: Irrevocable Letter of Credit No.

Gentlemen:

BY ORDER OF OUR CLIENT, ____________________, WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT NO. ____________________ IN YOUR FAVOR FOR AN AMOUNT NOT TO EXCEED IN THE AGGREGATE ____________________ DOLLARS, EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR [INSERT: ADDRESS] OFFICE, WITH OUR CLOSE OF BUSINESS ON [INSERT: DATE ONE YEAR FROM DATE OF ISSUANCE].

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR CLEAN SIGHT DRAFT ON US MENTIONING THEREON OUR CREDIT NO. ____________________, NO DOCUMENTS REQUIRED.

IF WE RECEIVE YOUR DRAFT AS MENTIONED ABOVE HERE AT OUR [INSERT: BANK STREET ADDRESS] OFFICE, PRIOR TO OUR CLOSE OF BUSINESS ON [INSERT: DATE ONE (1) YEAR FROM DATE OF ISSUANCE], AS SUCH DATE SHALL BE EXTENDED BY RENEWAL(S) OF THE TERM OF THIS LETTER OF CREDIT, WE WILL PROMPTLY HONOR SAME. PARTIAL DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY RENEWED FROM YEAR TO YEAR UNTIL THE EARLIER OF (X) [INSERT: DATE WHICH IS NOT LESS THAN 60 DAYS FOLLOWING THE EXPECTED EXPIRATION DATE OF THE LEASE] OR (Y) TERMINATION BY THE UNDERSIGNED BY NOTICE TO YOU TO BE SENT BY REGISTERED OR CERTIFIED MAIL (RETURN RECEIPT REQUESTED), OR SENT BY NATIONALLY RECOGNIZED COURIER SERVICE (E.G. FEDERAL EXPRESS) WITH SIGNATURE OF DELIVERY REQUIRED (AND AT YOUR OPTION, NOTICE TO AN ADDITIONAL PARTY DESIGNATED BY YOU) OF NOT LESS THAN ONE HUNDRED TWENTY (120) DAYS PRIOR TO THE THEN EXPIRATION DATE OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS TRANSFERABLE MULTIPLE TIMES. ALL TRANSFER CHARGES ARE FOR OUR CLIENT’S ACCOUNT.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICE 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

[NAME OF BANK]
EXHIBIT 4

Bathroom Work

The plan on the next page is attached solely to indicate the bathroom work referred to in Section 12.02 of the Agreement of Lease to which this exhibit is attached. All areas, locations, dimensions and conditions thereon are approximate.

(see attached)

EXHIBIT 5

Finishes List

(see attached)
EXECUTIVE EMPLOYMENT AGREEMENT

THIS EXECUTIVE EMPLOYMENT AGREEMENT (this “Agreement”) is made effective as of the 3rd day of March, 2014 (the “Effective Date”) by and between James R. Gilmartin (“Executive”) and Bankrate, Inc., a Delaware corporation (the “Company”).

RECITALS:

A. The Company desires to employ Executive to perform certain services for the Company, and Executive desires to accept said engagement from the Company.

B. The Company and Executive have agreed upon the terms and conditions of Executive’s employment by the Company and the parties desire to express the terms and conditions in this Agreement.

C. The Company and Executive intend for this Agreement to supersede all agreements between Executive and the Company as it relates to Executive’s employment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

1. Employment of Executive; Term. The Company hereby employs Executive initially as the Vice President, General Counsel and Corporate Secretary of the Company, and Executive hereby accepts such employment by the Company, under the terms of this Agreement. The term of employment hereunder (the “Term”) shall commence as of the Effective Date and shall terminate pursuant to Section 7 of this Agreement.

2. Duties and Location.

   A. Executive’s duties will initially consist of duties normally associated with the position identified in Section 1. Executive shall initially report to the Chief Financial Officer of the Company or his designee. Executive shall devote his full business time to the Company’s business and shall not render to others any service of any kind for compensation or engage in any activity which conflicts or interferes with the performance of his obligations under this Agreement as determined in the discretion of the Compensation Committee (the “Committee”) of the Board of Directors (the “Board”) without the express written consent of the Committee; provided, however, that Executive may engage in non-profit or charitable activities which do not involve substantial time and which do not materially interfere with his employment under this Agreement and which activities are not in competition with the Company and its affiliates as determined in the discretion of the Committee.

   B. Executive agrees that he shall at all times faithfully and to the best of his ability and experience perform all of the duties that may be required of him pursuant to the terms of this Agreement.
Executive will perform his services from any location within fifty (50) miles of New York, NY at the Company’s discretion.

3. **Base Salary.** Executive shall receive a base salary during the Term of $250,000.00 per annum (the “Base Salary”), which amount may be increased annually at the discretion of the Committee. The Base Salary shall be paid to Executive by the Company in accordance with the Company’s regular payroll practice as in effect from time to time.

4. **Annual Bonus.** Executive will be eligible to participate in an annual bonus program generally available to executive officers of the Company as approved at the discretion of the Committee.

5. **Executive Benefits.**

   A. Executive shall be entitled to participate in the employee benefit plans as shall be in effect for similarly situated employees of the Company generally from time to time, subject to the terms and conditions of each such plan. Executive shall be entitled to paid vacation each year in accordance with Company policy. All vacation times shall be subject to the approval of the Chief Executive Officer of the Company.

   B. Executive shall be eligible to participate in the Company’s stock option, stock purchase, or other stock incentive plans which are generally available to executive officers of the Company and shall be eligible for the grant of stock options, restricted stock or other awards there under in accordance with the terms and provisions of such plans.

6. **Expenses.**

   A. Executive shall be reimbursed by the Company monthly for the ordinary and necessary reasonable business expenses incurred by him in the performance of his duties for the Company, including travel and lodging expenses, meals, client entertainment, and cell phone expense, all in accordance with Company policy; provided that Executive shall first document said business expenses in the manner generally required by the Company under its policies and procedures, and in any event, in the manner required to meet applicable regulations of the Internal Revenue Service relating to the deductibility of such expenses.

   B. With respect to any amount of expenses eligible for reimbursement that is required to be included in Executive’s gross income for federal income tax purposes, such expenses shall be reimbursed to Executive no later than December 31 of the year following the year in which Executive incurs the related expenses. In no event shall the amount of expenses (or in-kind benefits) eligible for reimbursement in one taxable year affect the amount of expenses (or in-kind benefits) eligible for reimbursement in any other taxable year (except for those medical reimbursements referred to in Section 105(b) of the Internal Revenue Code of 1986), nor shall Executive’s right to reimbursement or in-kind benefits be subject to liquidation or exchange for another benefit.
7. **Termination.**

The Term and Executive’s employment may be terminated upon the occurrence of any of the following events:

A. Death of Executive;

B. Mental or physical disability of Executive which prevents him from performing substantially all of his duties hereunder for a period of ninety (90) consecutive days or one hundred twenty (120) days during any one year (“Disability”).

C. For Cause, as defined below:

1. Executive’s material breach of this Agreement which is not cured within ten (10) days of receipt of written notice to Executive specifying the breach;

2. Executive’s dishonesty, fraud, malfeasance, gross negligence or misconduct which, in the reasonable judgment of the Board, has resulted, or is likely to result, in material injury to the Company or the business reputation of the Company;

3. Executive’s willful failure to comply with the direction (consistent with Executive’s duties) of the Board or to follow the policies, procedures, and rules of the Company;

4. Executive’s negligent failure to comply with the direction (consistent with Executive’s duties) of the Board or to follow the policies, procedures, and rules of the Company which is not cured within thirty (30) days of receipt of written notice; or

5. Executive’s conviction of, or Executive’s entry of a plea of guilty or no contest to, a felony or crime involving moral turpitude.

D. By either party, upon two weeks written notice in their sole discretion other than pursuant to sub-section A, B or C above; however, the Company may elect upon such notice to require Executive to immediately cease coming to work and return any and all Company property.

E. By Executive if the Company materially breaches any provisions of this Agreement, including, without limitation, Section 2(A), 3, 4, 5, or 6, and fails to cure such breach within thirty (30) days of receipt of written notice to the Company specifying the breach; provided that Executive provides such notice within thirty (30) days of becoming aware of such breach and terminates his employment within thirty (30) days following the expiration of such cure period.

F. “Without Cause” means any termination of employment by Company which is not defined in sub-section C above.

8. **Post Termination Payment Obligations.**

A. If the Term and Executive’s employment is terminated for any of the reasons stated in sub-sections A, B or C of Section 7 of this Agreement or is terminated by Executive pursuant to sub-section D of Section 7 of this Agreement, then Executive shall be entitled to receive his Base Salary at the then current rate and any accrued bonus through the effective date of the termination, payable within fifteen (15) days of the effective termination date, and thereafter the Company shall have no further payment obligations under this Agreement, but Executive shall continue to be bound by Sections 11, 12, and 13 and all other post-termination obligations contained in this Agreement and provisions of this Agreement that specifically survive termination of the Term.

B. If the Term and Executive’s employment is terminated by the Company pursuant to subsection D of Section 7 of this Agreement or is terminated by Executive pursuant to subsection E of Section 7 of this Agreement, then Company shall pay Executive (i) his Base Salary at the then current rate and any accrued bonus through the effective date of the termination, payable within fifteen (15) days of the termination date and (ii) a separation payment in the amount of his Base Salary at the then current rate for twelve (12) months (the “Separation Payment”). Subject to Executive’s compliance with Section 8(C) hereof, the Separation Payment shall be paid in three installments as follows:
1. One-Third of the Separation Payment shall be payable on the four (4) month anniversary of the effective date of the termination;

2. One-Third of the Separation Payment shall be payable on the six (6) month anniversary of the effective date of the termination; and

3. One-Third of the Separation Payment shall be payable on the twelve (12) month anniversary of the effective date of the termination.

Thereafter, the Company shall have no further payment obligations under this Agreement, but Executive shall continue to be bound by Sections 11, 12, and 13 and all other post-termination obligations contained in this Agreement and provisions of this Agreement that specifically survive termination of this Agreement.

The post-termination obligations under this sub-section B shall be binding upon the Company regardless of Executive’s subsequent employment with any other person, firm, partnership, association, business organization, corporation or other entity which is not affiliated with the Company.

C. As a condition to the Company’s obligation to pay the Separation Payment, Executive shall:

1. Within 60 days following Executive’s termination of employment, execute (and not revoke) a Separation and Release Agreement in a form prepared by and acceptable to the Company whereby Executive releases the Company and its affiliates and their respective officers, directors and employees from any and all liability and settles all claims of any kind. If a bona fide dispute exists, then Executive shall deliver a written notice of the nature of the dispute to the Company within 30 days following receipt of the Separation and Release Agreement. Benefits shall be deemed forfeited if the release (or a written notice of a bona fide dispute) is not executed and delivered to the Company within the time specified herein; and

2. Comply with the restrictive covenants (Sections 11 and 12 of this Agreement) and all other post-termination obligations contained in this Agreement.

The parties agree that regardless of whether Executive complies with the provisions of Section 8(C)(1) and whether the Company pays Executive the Separation Payment, Executive shall continue to be bound by Sections 11, 12 and 13 and all other post-termination obligations contained in this Agreement and provisions of this Agreement that survive termination of the Term and Executive’s employment.

9. **Work Product.** All Work Product (defined below) shall be work made for hire by Executive and owned by the Company. If any of the Work Product may not, by operation of law or otherwise, be considered work made for hire by Executive for the Company, or if ownership of all right, title, and interest to the legal rights therein shall not otherwise vest exclusively in the Company, Executive hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, patents, registrations, and any other protection available in the Work Product. Executive agrees to perform, during or after termination of Executive’s employment by the Company, such further acts as may be necessary or desirable to transfer, perfect and defend the Company’s ownership of the Work Product as requested by the Company. “Work Product” means the data, materials, formulas, research, documentation, computer programs, communication systems, audio systems, system designs, inventions (whether or not patentable), and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, moral rights and other property rights, created or developed in whole or in part by Executive, while employed by the Company and its affiliates, within the scope of Executive’s employment or which otherwise relates in any manner to the business or projected business of the Company and its affiliates.

10. **Set-Off.** If at the time of termination of Executive’s employment for any reason, Executive has any outstanding obligations to the Company, Executive acknowledges that the Company is authorized to deduct from Executive’s final paycheck and the Separation Payment any then documented amounts owed to the Company.
11. **Trade Secrets and Confidential Information.**

   A. During the course of Executive’s employment with the Company, the Company and its affiliates may disclose to Executive Trade Secrets and Confidential Information (each as defined below). The Trade Secrets and the Confidential Information of the Company and its affiliates are the sole and exclusive property of the Company and its affiliates (or a third party providing such information to the Company or its applicable affiliate). The disclosure of the Trade Secrets and the Confidential Information of the Company and its affiliates to Executive does not give Executive any license, interest or rights of any kind in the Trade Secrets or Confidential Information.

   B. Executive may use the Trade Secrets and Confidential Information solely for the benefit of the Company and its affiliates while Executive is an employee of the Company. Executive shall hold in confidence the Trade Secrets and Confidential Information of the Company. Except in the performance of services for the Company and its affiliates, Executive shall not reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer the Trade Secrets or the Confidential Information of the Company and its affiliates or any portion thereof.

   C. The obligations under this Agreement with regard to the Trade Secrets of the Company and its affiliates remain in effect as long as the information constitutes a trade secret under applicable law. The obligations with regard to the Confidential Information of the Company shall remain in effect while Executive is employed by the Company and its affiliates and thereafter.

   D. Executive agrees to return to the Company, upon Executive’s resignation, termination, or upon request by the Company, the Trade Secrets and Confidential Information of the Company and all materials relating thereto.

   E. As used herein, “Trade Secrets” means information of the Company and its affiliates, and their respective licensors, suppliers, clients and customers, including, but not limited to, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which is not commonly known or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

   F. As used herein, “Confidential Information” means information, other than Trade Secrets, that is treated as confidential, and that would potentially damage or interfere with, in any manner, the business of the Company and its affiliates if disclosed. Confidential Information includes, but is not limited to, information concerning the Company’s (and its affiliates’) financial structure, pricing, revenue sharing, partner agreements, customer agreements, marketing plans, methods of operation, and internal operating procedures.

Notwithstanding the foregoing, the provisions of this Section 11 do not apply to (i) information which is general knowledge in the Company’s industry, (ii) information that has been disclosed to Executive by third parties who are unrelated to the Company and who are not bound by agreements of confidentiality with respect thereto, and (iii) as Executive may be required to disclose by law but only to the extent required by law.

12. **Restrictive Covenants.**

   A. **Non-competition.** Executive agrees that for so long as Executive is employed by the Company or any of its affiliates and for a period of one (1) year thereafter, Executive will not, individually or on behalf of any person, firm, partnership, association, business organization, corporation or other entity engaged in the Business of the Company or its affiliates, engage in or perform, anywhere within the United States, Canada and any other such region in which the Company or its affiliates operates, which shall constitute the territory, any activities which are competitive with the Business of the Company or its affiliates. Nothing herein shall be construed to prohibit Executive from acquiring shares of capital stock of any public corporation, provided that such investment does not exceed 5% of the stock of such public corporation.
B. **Non-Solicitation; Non-Disparagement.** Executive agrees that for so long as Executive is employed by the Company or any of its affiliates and for a period thereafter equal to twelve (12) months from the date Executive ceases to be employed by the Company and its affiliates for any reason, neither Executive nor any company or other entity controlled by Executive (whether currently existing or hereafter acquired or formed) shall, directly or indirectly, in any capacity, (i) solicit or induce, or attempt to solicit or induce, any person who accepts employment with the Company and its affiliates to leave the employ of the Company or any of its affiliates for any reason whatsoever, (ii) hire or employ any person who accepts employment with the Company and its affiliates, (iii) solicit or induce, or attempt to solicit or induce, any customer of the Company and its affiliates not to purchase any goods or products with respect to the Company and its affiliates or (iv) otherwise impede or interfere in any way with any customer relationship of the Company or any of its affiliates with respect to the Company and its affiliates. Executive agrees not to disparage the Company or its affiliates in any way, other than as part of the judicial, arbitration or other dispute resolution process in connection with any litigation, mediation, arbitration or other judicial proceeding arising under any claim brought in connection with this Agreement, or other than when compelled to testify under oath by subpoena, regulation or court order.

C. For purposes of this Section 14, the term “Business” shall mean the business of the delivery of editorial content and product research related to consumer financial services delivered in print or over the Internet.

13. **Injunctive Relief.**

Executive acknowledges that breach of the provisions of Sections 11 and/or 12 of this Agreement would result in irreparable injury and permanent damage to the Company and its affiliates, which prohibitions or restrictions Executive acknowledges are both reasonable and necessary under the circumstances, singularly and in the aggregate, to protect the interests of the Company and its affiliates. Executive recognizes and agrees that the ascertainment of damages in the event of a breach of Sections 11 and/or 12 of this Agreement would be difficult, and that money damages alone would be an inadequate remedy for the injuries and damages which would be suffered by the Company and its affiliates from breach by Executive.

Executive therefore agrees: (i) that, in the event of a breach of Sections 11 and/or 12 of this Agreement, the Company, in addition to and without limiting any of the remedies or rights which it may have at law or in equity or pursuant to this Agreement, shall have the right to injunctive relief or other similar remedy in order to specifically enforce the provisions hereof; and (ii) to waive and not to (A) assert any defense to the effect that the Company has an adequate remedy at law with respect to any such breach, (B) require that the Company submit proof of the economic value of any Trade Secret, or (C) require that the Company post a bond or any other security. Nothing contained herein shall preclude the Company from seeking monetary damages of any kind, including reasonable fees and expenses of counsel and other expenses, in a court of law.

14. **Survival.** The provisions of Sections 8 through 31 shall survive termination of the Term and of Executive’s employment.

15. **Invalidity of Any Provision.** It is the intention of the parties hereto that Sections 11 through 13 of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of each state and jurisdiction in which such enforcement is sought, but that the unenforceability (or the modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable or impair the remainder of this Agreement which shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provisions. The parties further agree to alter the balance of this Agreement in order to render the same valid and enforceable.

16. **Waiver of Breach.** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.

17. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Company, its successors and assigns, and the Company shall require any successors and assigns to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession or assignment had taken
place. Neither this Agreement nor any right or interest hereunder shall be assignable or transferable by Executive, his beneficiaries or legal representatives, except by will or by the laws of descent and distribution.

18. **License.** To the extent that any pre-existing materials are contained in the materials Executive delivers to the Company or the Company’s customers, and such preexisting materials are not Work Product, Executive grants to the Company an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) use and distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof and (ii) authorize others to do any of the foregoing. Executive shall notify Company in writing of any and all pre-existing materials delivered to the Company by Executive.

19. **Release.** Executive acknowledges that Executive may provide the image, likeness, voice, or other characteristics of Executive in the services, materials, computer programs and other deliverables that Executive provides as a part of this Agreement. Executive hereby consents to the use of such characteristics of Executive by the Company in the products or services of the Company and its affiliates and releases the Company and its affiliates and their respective agents, contractors, licensees and assigns from any claims which Executive has or may have for invasion of privacy, right of publicity, copyright infringement, or any other causes of action arising out of the use, adaptation, reproduction, distribution, broadcast, or exhibition of such characteristics.

20. **Severability.** If any provision or part of a provision of this Agreement shall be determined to be void and unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable.

21. **Costs of Enforcement.** In the event either party breaches this Agreement, the breaching party shall be liable to the non-breaching party for all costs of enforcement, including reasonable attorneys’ fees and court costs, in addition to all other damages and redress available in equity or at law.

22. **No Prior Agreements.** Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder shall not violate or be a breach of any agreement with a former employer, client or any other person or entity.

23. **Modification.** This Agreement may be modified only by agreement in writing signed by both the Company and Executive.

24. **Governing Law.** This Agreement shall be governed in all aspects by the laws of the State of Florida without regard to its rules governing conflicts of law.

25. **Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

26. **Notice.** Whenever any notice is required, it shall be given in writing addressed as follows:

To Company:
Bankrate, Inc.
477 Madison Avenue, Suite 430
New York, NY 10022
Attention: Chief Financial Officer
Telecopy: 917-368-8611

To Executive:
James R. Gilmartin
620 Timpson Street
Pelham, NY 10803

Notice shall be deemed given and effective three (3) days after the deposit in the U.S. mail of a writing addressed as above and sent first class mail, certified, return receipt requested, or when actually received. Either party may change the address for notice by notifying the other party of such change in
27. **“Key Employee” Insurance.** The Company shall have the option, but not the obligation, to obtain on the life of Executive, pay all premium amounts related to, and maintain, “key employee” insurance naming the Company as beneficiary. Selection of such insurance policy shall be in the sole and absolute discretion of the Company's Board of Directors. Executive shall cooperate fully with the Company, the Board, and the insurer in applying for, obtaining and maintaining such life insurance, by executing and delivering such further and other documents as the Company, the Board and/or the insurer may request from time to time, and doing all matters and things which may be convenient or necessary to obtain such insurance, including, without limitation, submitting to any physical examinations and providing any medical information required by the insurer.

28. **Indemnification.** The Company agrees, to the extent permitted by applicable law and the Company’s Certificate of Incorporation, to defend, indemnify and hold harmless Executive against any and all loss, damage, liability and expense, including, without limitation, reasonable attorneys’ fees, disbursements court costs, and any amounts paid in settlement and the costs and expenses of enforcing this section of the Agreement, which may be suffered or incurred by Executive in connection with the provision of his services hereunder, including, without limitation, any claims, litigations, disputes, actions, investigations or other matters, provided that such loss, damage, liability and expense (i) arises out of or in connection with the performance by Executive of his obligations under this Agreement and (ii) is not the result of any material breach by Executive of his obligations hereunder, and provided further that Company shall be under no obligation to defend, indemnify or hold harmless Executive if Executive has acted with gross negligence or willful misconduct.

In addition to the foregoing, Company agrees to provide Executive with coverage under a Directors & Officers insurance policy to the same extent as the Company currently provides its executive officers.

29. **Jurisdiction and Venue.** Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Palm Beach County or the United States District Court, for the Southern District of Florida located in Palm Beach County. Each party consents to the jurisdiction of such Florida court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such Florida court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

30. **Specified Employee.** Notwithstanding anything herein to the contrary, if an obligation under this Agreement arises on account of Executive’s separation from service while Executive is a specified employee, within the meaning of Section 409A of the Code that is a payment of “deferred compensation” (as defined under treasury regulation section 1.409A-1(b)(1), after giving effect to the exemptions in treasury regulation sections 1.409A-1(b)(3) through (b)(12)) and is scheduled to be paid within six (6) months after such separation from service, the applicable amount be accumulated and deferred without interest, and shall be paid on the first day of the seventh month following the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive’s estate following his death.

31. **Entire Agreement.** This Agreement represents the entire understanding of the parties concerning the subject matter hereof and supersedes all prior communications, agreements and understandings, whether oral or written, relating to the subject matter hereof. The language contained herein shall be deemed to be that negotiated and approved by both parties and no rule of strict construction shall be applied.
32. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE PERFORMANCE OF THIS AGREEMENT, OR THE RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THIS AGREEMENT OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION. EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTION GOVERNED BY THIS AGREEMENT AND SPECIFICALLY WITH RESPECT TO THE TERMS OF THIS SECTION.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

EXECUTIVE: 

COMPANY: 

**BANKRATE, INC.**

By: 

Name: James R. Gilmartin

Kenneth S. Esterow

President and CEO

4
List of Subsidiaries of Bankrate, Inc. (Delaware)

<table>
<thead>
<tr>
<th>Subsidiary</th>
<th>State/Country of Incorporation</th>
<th>Direct Stockholders of Subsidiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bankrate Information Consulting</td>
<td>China - WFOE</td>
<td>Rate Holding Co. (100%)</td>
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<tr>
<td>(Beijing) Co. Ltd.</td>
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<tr>
<td>Bankrate, LLC</td>
<td>Delaware</td>
<td>Bankrate, Inc. (100%)</td>
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<td>Caring, Inc.</td>
<td>Delaware</td>
<td>Bankrate, Inc. (100%)</td>
</tr>
<tr>
<td>CreditCards.com, LLC</td>
<td>Delaware</td>
<td>LinkOffers, Inc. (100%)</td>
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<td>CreditCards.com Limited</td>
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<td>LinkOffers, Inc. (100%)</td>
</tr>
<tr>
<td>Freedom Marketing Limited</td>
<td>United Kingdom</td>
<td>CreditCards.com Limited (100%)</td>
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<td>LinkOffers, Inc.</td>
<td>Delaware</td>
<td>Bankrate, Inc. (100%)</td>
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<td>Quizzle, LLC</td>
<td>Michigan</td>
<td>Bankrate, LLC (100%)</td>
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<td>Rate Holding Co.</td>
<td>Cayman Islands</td>
<td>Bankrate, Inc. (100%)</td>
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<tr>
<td>Wallaby Financial Inc.</td>
<td>Delaware</td>
<td>LinkOffers, Inc. (100%)</td>
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</table>
We have issued our reports dated March 22, 2017, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Bankrate, Inc. on Form 10-K for the year ended December 31, 2016. We consent to the incorporation by reference of said reports in the Registration Statements of Bankrate, Inc. on Forms S-8 (File No. 333-175000 and File No. 333-206601).

/s/ GRANT THORNTON LLP

New York, New York
March 22, 2017
POWER OF ATTORNEY

Bankrate, Inc.

KNOW ALL PERSONS BY THESE PRESENTS, that each of the undersigned Directors and Officers of Bankrate, Inc. (the "Corporation"), a Delaware corporation, hereby names, constitutes and appoints Kenneth S. Esterow, Steven D. Barnhart, and James R. Gilmartin, and each of them, as such person's true and lawful attorney-in-fact with power of substitution and resubstitution to sign in his or her name, place and stead, in any and all capacities, and to do any and all things and execute any and all instruments that such attorney may deem necessary or advisable under the Securities Exchange Act of 1934, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission (the "Commission"), in connection with the filing with the Commission of an Annual Report on Form 10-K of the Corporation for the fiscal year ended December 31, 2016 (the "2016 Form 10-K"); including specifically, but without limiting the generality of the foregoing, the power and authority to sign his or her name in his or her capacity as a member of the Board of Directors of the Corporation to the 2016 Form 10-K and such other form or forms as may be appropriate to be filed with the Commission as he or she may deem appropriate, together with all exhibits thereto, and to any and all amendments or supplements thereto and to any other documents filed with the Commission, as fully for all intents and purposes as he or she might or could do in person, and hereby ratifies and confirms all that said attorney-in-fact and agent, acting alone may lawfully do or cause to be done by virtue hereof.

[Signature Page Follows]
IN WITNESS WHEREOF, the following persons have duly signed this Power of Attorney in the capacities indicated as of this 22nd day of March, 2017.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Capacity</th>
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<tbody>
<tr>
<td>/s/ Kenneth S. Esterow</td>
<td>President, Chief Executive Officer and Director (Principal Executive Officer)</td>
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<tr>
<td>Kenneth S. Esterow</td>
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<tr>
<td>/s/ Steven D. Barnhart</td>
<td>Senior Vice President-Chief Financial Officer (Principal Financial Officer)</td>
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<td>Steven D. Barnhart</td>
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<tr>
<td>/s/ Janet M. Gunzburg</td>
<td>Vice President, Corporate Controller (Principal Accounting Officer)</td>
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<td>Janet M. Gunzburg</td>
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<td>/s/ Peter C. Morse</td>
<td>Director</td>
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<td>/s/ Seth Brody</td>
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<td>/s/ Michael J. Kelly</td>
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<td>/s/ Sree Kotay</td>
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<td>/s/ Christine Petersen</td>
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<td>/s/ Richard J. Pinola</td>
<td>Director</td>
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<td>Richard J. Pinola</td>
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<tr>
<td>/s/ Mitch Truwit</td>
<td>Director</td>
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<td>Mitch Truwit</td>
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CERTIFICATIONS

I, Kenneth S. Esterow, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2016 of Bankrate, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: March 22, 2017

/s/ Kenneth S. Esterow
Kenneth S. Esterow
President and Chief Executive Officer
CERTIFICATIONS

I, Steven D. Barnhart, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2016 of Bankrate, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: March 22, 2017

/s/ Steven D. Barnhart
Steven D. Barnhart
Senior Vice President, Chief Financial Officer
Exhibit 32.1

Chief Executive Officer's Certification required under Section 906 of Sarbanes-Oxley Act of 2002

In connection with the Annual Report of Bankrate, Inc. (the “Company”) on Form 10-K for the year ended December 31, 2016, as filed with the Securities and Exchange Commission (the “Report”), I, Kenneth S. Esterow, President and Chief Executive Officer of the Company, certify pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, (a) this Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: March 22, 2017

/s/ Kenneth S. Esterow
Kenneth S. Esterow
President and Chief Executive Officer

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.
Exhibit 32.2

Chief Financial Officer’s Certification required under Section 906 of Sarbanes-Oxley Act of 2002

In connection with the Annual Report of Bankrate, Inc. (the “Company”) on Form 10-K for the year ended December 31, 2016, as filed with the Securities and Exchange Commission (the “Report”), I, Steven D. Barnhart, Senior Vice President, Chief Financial Officer of the Company, certify pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, (a) this Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: March 22, 2017

/s/ Steven D. Barnhart

Steven D. Barnhart
Senior Vice President, Chief Financial Officer

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.