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

FORM 10-K

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

FOR THE FISCAL YEAR ENDED AUGUST 31, 2020
OR

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

FOR THE TRANSITION PERIOD FROM ___ TO ___

Commission File Number: **000-55418**

KUSHCO HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Nevada	**46-5268202**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

6261 Katella Avenue, Suite 250, Cypress, CA 90630
(Address of principal executive offices, including zip code)

(714) 462-4603
(Registrant's telephone number, including area code)

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

Securities registered pursuant to Section 12(g) of the Act:Common Stock, par value $0.001 per share

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

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

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

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

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

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

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

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

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 voting and non-voting common equity held by non-affiliates on February 28, 2020 was approximately $06,251,554.

As of November 6, 2020, there were 127,274,667 shares of our common stock issued and outstanding.

KUSHCO HOLDINGS, INC.
ANNUAL REPORT ON FORM 10-K
FOR THE FISCAL YEAR ENDED AUGUST 31, 2020
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FORWARD-LOOKING STATEMENTS

For purposes of this report, unless otherwise indicated or the context otherwise requires, all references herein to "KushCo", "the Company", "we," "us," and "our," refer to KushCo Holdings, Inc., a Nevada corporation, and its subsidiaries.

Forward-Looking Statements

This Annual Report on Form 10-K contains statements that are not statements of historical fact and are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The forward-looking statements are principally, but not exclusively, contained in "Item 1: Business" and "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations." Forward-looking statements include, but are not limited to, statements about our plans, objectives, expectations and intentions that are not historical facts. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expects," "plans," "anticipates," "believes," "contemplate," "continue," "seek," "target," "goals," "sees," "estimates," "projects," "predicts," "intends," "think," "potential," "objectives," "optimistic," "strategy," and similar expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We discuss many of these risks and uncertainties in detail under the heading "Item 1A. Risk Factors" beginning on page 10 of this Annual Report on Form 10-K. You should carefully review all of these factors, as well as other risks described in our public filings, and you should be aware that there may be other factors, including factors of which we are not currently aware, that could cause these differences. Given these risks and uncertainties, you should not place undue reliance on any forward-looking statements. In addition, the forward-looking statements in this Annual Report on Form 10-K are made as of the date of this report, and we do not undertake, and expressly disclaim any duty to update such statements, whether as a result of new information, new developments or otherwise, except to the extent that disclosure may be required by law.

PART I

Item 1. Business

Company and Product Overview

KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) markets and sells a wide variety of ancillary products and services to customers operating in the regulated medical and adult recreational cannabis and hemp-derived cannabidiol ("CBD") industries.

Our products primarily consist of bottles, jars, bags, tubes, containers, vape cartridges, vape batteries and accessories, labels and processing supplies, solvents, natural products, stainless steel tanks, and custom branded anti-counterfeit and authentication labels. We maintain relationships with a broad range of domestic and international manufacturers, which enables us to source a wide variety of products in a cost-effective manner and to pass such cost savings on to our customers. In addition to a complete product line, we have sophisticated labeling and customization capabilities, which allow us to add significant value to our customers' packaging and vape hardware design processes, enabling them to turn their packaging and branding into an effective marketing tool. As more multi-state operators ("MSOs"), licensed producers ("LPs"), and leading brands seek ways to further differentiate their brands and product lines, our customization capabilities and premium customer service help us win new product opportunities with both existing and new customers. Our products are relied upon by brand owners, farmers, growers, processors, producers, distributors, and licensed medical and adult recreational cannabis retailers.

Our services primarily consist of retail services and hemp trading services, which focus on facilitating compliant hemp transactions for in-network, pre-qualified farmers and a pre-qualified buyer network. Our retail services division focuses on building distribution networks of compliant hemp-derived CBD brands across conventional and other retail channels, including convenience, pet care, and beauty channels.

As a leader in custom and child-resistant compatible packaging, exclusive vape products, and unique product and service offerings, such as our stainless steel tanks, hemp trading services, and retail services, we serve as a "one-stop-shop" for our customers, combining creativity with compliance knowledge and experience to provide solutions in various stages of the cannabis and CBD supply chain.

Due to the complementary nature of our product and service ecosystem, we are able to successfully cross-sell into our existing customer base, while attracting new customers who are looking to consolidate their vendors and partner with a trusted and established source for nearly all ancillary cannabis and CBD solutions.

Packaging, Papers, and Supplies: We offer a wide variety of child-resistant compatible, customizable, and sustainable packaging solutions, including bottles, bags, tubes, and containers, which come in a variety of sizes and colors. Representing the Company's founding segment, our packaging, papers, and supplies segment is not a commodity, and often requires a significant degree of customization and modification in order to adhere to each jurisdiction's regulatory requirements. We believe we have a leading position in fully customizable labeling and packaging solutions to address the different state-by-state and national regulatory requirements. Our focus and investments on printing, molding, and other equipment help ensure that we continue to meet the evolving needs of our customers with respect to a variety of form factors and unique markets.

Vaporizer Hardware and Technology: We offer a wide selection of vaporizer cartridges in a variety of form factors (510 thread cartridge, pod systems, disposables, etc.) with reservoir materials including polyamide 12 or glass, internal materials consisting of brass or stainless steel, and porous ceramic heating core technology. We also offer a wide selection of batteries to accommodate the vape cartridges. All vaporizer cartridges, batteries, and disposable units can be customized for clients, including adjusting colors/finishes, materials, and adding logos and branding as directed by our clients'. We deliver the vaporizer products directly to clients, unassembled and empty, where the product is subsequently filled and assembled at the client's place of business by their qualified staff. We entered this segment in 2017 in response to customer demand and trends indicating vape as the fastest growing cannabis category for the foreseeable future. We are a leading distributor for CCELL, a dominant vape device supplier, which specializes in premium and high-quality vape hardware.

Energy and Natural Products: We provide ultra-pure solvents, including but not limited to isobutane, n-butane, propane, ethanol, pre-mixes, custom blends, and dry ice. These substances are essential in the extraction process, which produces products that supply the vaping and concentrate sector of the market. We ship these products to customers from various distribution hubs and strategic vendor partnerships in key markets across the country. We believe we are the only cannabis industry supplier to offer stainless steel tanks, which have been shown through independent studies to be significantly cleaner than traditional carbon steel tanks that often leave a trail of contaminants in the cannabis or CBD oil. Our new stainless steel

tanks are available in standard LP239 cylinder sizes and are resistant to rust and degradation, are less brittle compared to carbon steel tanks, do not react from exposure to air or moisture, and are pre-cleaned before being filled, providing a cleaner vessel during the extraction process and resulting in a higher quality end product. In addition, we are a distribution platform for products manufactured by Abstrax Tech. Abstrax Tech specializes in botanically-derived terpene blends, terpene isolates, water-soluble terpene blends, and diluents, with all products consisting of ingredients from non-cannabis sources. These products are utilized by our customers for a wide variety of applications. These products are ordered through us and drop shipped to our customers by the vendor, where they are then incorporated into finished products by the customer.

CBD Services: Our CBD services division focuses on mass retail execution, merchandising, and sales management for compliant hemp-derived CBD products, with hemp trading solutions for growers and processors. Our retail services business focuses on industry education and compliance, as well as building distribution networks of compliant hemp-derived CBD brands across conventional retail channels. Through strategic partnerships with best-in-class sales agencies, this business unit provides comprehensive retail solutions to leading CBD brands. We believe our partnerships with leading CPG sales agencies is the first large scale go-to-market operation focused on helping compliant CBD brands achieve mass distribution across all consumer channels in legal U.S markets.

Our Corporate History and Background

KushCo Holdings, Inc. (“KushCo”) was incorporated in the State of Nevada on February 26, 2014. On March 4, 2014, the stockholders of KIM International Corporation (“KIM”) exchanged all 10,000 of their common shares of KIM for 32,400,000 common shares of KushCo. The operations of KIM became the operations of KushCo after the share exchange and, accordingly, the transaction was accounted for as a recapitalization of KIM, whereby the historical financial statements of KIM are presented as the historical financial statements of the combined entity.

Subsequent to the share exchange, the members of KIM owned 32,400,000 shares of our common stock, effectively obtaining operational and management control of KushCo. KushCo had no operations prior to the share exchange. As a result of the recapitalization, KIM was the acquiring entity in accordance with ASC 805, Business Combinations. The accumulated losses of KIM were carried forward after the completion of the share exchange. Operations prior to the share exchange were those of KIM.

On April 10, 2015, we entered into an equity purchase agreement to acquire all of the issued and outstanding membership interests in Dank Bottles, LLC ("Dank"), a Colorado limited liability company. In exchange for the purchased interests, we paid cash consideration of $373,725 and issued 3,500,000 shares of common stock to the sellers of Dank.

On May 1, 2017, we and KBCMP, Inc., our newly formed wholly-owned subsidiary (“Merger Sub”), entered into an Agreement of Merger with Lancer West Enterprises, Inc., a California corporation, Walnut Ventures, a California corporation, and certain individuals, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in our indirect acquisition of CMP Wellness, LLC (“CMP”), a California limited liability company and distributor of vaporizers, cartridges and accessories. CMP was dissolved on October 24, 2019.

On May 2, 2018, we and KCH Energy, LLC, a wholly-owned subsidiary of the Company (“KCH”), completed our acquisition of Summit Innovations, LLC (“Summit”), a leading distributor of solvents to the legal cannabis industry. Pursuant to the terms of the Agreement and Plan of Merger with Summit, Summit merged with and into KCH, with KCH as the surviving entity. KCH was subsequently renamed Kush Energy, LLC on January 2, 2019.

On July 11, 2018, we entered into a Membership Interest Purchase Agreement with the members of Zack Darling Creative Associates, LLC (“ZDCA”), parent of wholly-owned subsidiary, Hybrid Creative, LLC (“Hybrid”), a specialist design agency, whereby we purchased the entire issued membership interest of ZDCA. Following the acquisition, ZDCA operates as a wholly-owned subsidiary of ours, with Hybrid continuing to operate as a wholly-owned subsidiary of ZDCA.

On March 11, 2019, KCH Distribution Inc., dba Kush Supply Co. Canada was formed as the Canadian arm of KushCo’s business.

Sales and Marketing

We sell primarily into the business-to-business market, which includes brand owners, farmers, growers, processors, producers, distributors, and licensed retailers in states with legal medical and/or adult recreational use cannabis programs and legal CBD programs. We reach our large and diversified customer base through our direct sales force and our e-commerce website. Our

operational personnel work closely with our sales personnel and customer service representatives to satisfy our customers' needs through the distribution of high-quality products, on-time deliveries, value-added regulatory insight, and customized branding solutions and other services.

Our dedicated sales professionals maintain contact with existing clients and secure on-going orders, but also target new customers. We believe our "boots-on-the-ground" approach allows us to develop deep relationships with the key players in each major market and is vital in new emerging markets where value-add can be provided through educational and consultative sales messaging.

We are able to dedicate certain sales and marketing efforts to particular products, customers and/or geographic regions, as needed, which enables us to develop expertise that is highly valued by our customers.

Our marketing activities include brand and logo development, advertising and marketing through trade shows, trade publications, social media, websites, public relations, other promotional materials, and all other points of contact with customers and prospective customers.

Brand and Logo Development. We believe that we have built one of the strongest and most recognizable brands in the legal cannabis and CBD industries. We recognized early on the importance of creating a strong, identifiable and lasting brand that would separate our Company from the competition, and resonate with customers. Our logo, our name, the style of our ads, and all collateral material reflect our "brand image."

Advertising & Marketing. We run ads periodically in certain trade publications and on specific websites that reach our target audience. We believe providing ongoing exposure to our brand and product offering enhances the value of our corporate brand. We maintain a list of our customers and prospects, and email them regularly. These campaigns may be seasonally based (such as holiday promotions) or may be "news" based to communicate important information to our customers and potential customers. Staying in touch with our customers and prospects is a key component in our marketing program.

Public Relations. We have an active public relations program, which has helped build the KushCo brand and position our Company not only as a leader in the industry, but as a company with an in-depth understanding of the various state and local regulations that govern the legal cannabis and CBD industries. We have appeared in numerous newspaper articles, online videos, digital media outlets, and television reports.

Other Promotional Materials. Our marketing personnel regularly design highly targeted brochures, sales sheets, and catalogs that we use in our sales and marketing programs. These professionally designed and quality-printed pieces help promote our Company while serving as useful sales tools.

Competition

We face competition from several competitors of varying sizes and geographic reach who produce and sell products similar to ours. We believe that we have differentiated ourselves from competitors based on several factors. We have built what we consider to be one of the strongest brands in the industry. We have a local sales presence in established and emerging medical and adult recreational use markets, such as Arizona, California, Colorado, Florida, Georgia, Illinois, Massachusetts, Michigan, New York, Washington, as well as Canada, which enable us to meet our customers' demands at a speed and level of service that we believe surpasses that of the competition. We believe we have the highest quality and a comprehensive variety of products and services that meet our customers' needs, given our status as a one-stop-shop solutions provider delivering a valuable product and service ecosystem. We believe we offer the best customized and branded packaging solutions in the market. Additionally, we believe our size and customer relationships give us significant insight and expertise in our industry. As a result, we have become more than just a supplier to our customers – we have become a trusted partner, with insight and recommendations that help our customers' businesses grow and thrive. In addition, KushCo is committed to continuing to build its suite of proprietary and innovative products that are exclusive to the Company.

Intellectual Property

We currently hold a collection of intellectual property rights relating to our products and services, including patents and trademarks, and we have several pending patent and trademark applications. No single intellectual property right is solely responsible for protecting the Company's products and services. We believe the ownership of such intellectual property is important to help secure new customers, cross-sell more products to our existing customers, differentiate ourselves from our

competitors and defend our competitive position. The Company believes the duration of its intellectual property rights is adequate relative to the expected lives of its products.

Customers

We service customers across several industries including all areas of the legal cannabis and CBD supply chains including brand owners, farmers, growers, processors, producers, distributors, and licensed retailers.

We have experienced growth in our large customer base as well as growth in the number of larger customers purchasing $500,000 or more per year. The table below shows our revenue (in thousands) for the years ended August 31, 2020 and 2019 from adult recreational use states in the United States, medical use only states in the United States, Canada and all other countries.

Shipping State / Province	2020 Revenue	% of 2020 Revenue	2019 Revenue	% of 2019 Revenue
CA	$ 21,371	18.8 %	$ 73,638	49.4 %
WA	8,845	7.8	11,543	7.7
CO	8,661	7.6	10,891	7.3
MI	7,212	6.3	4,013	2.7
OR	5,944	5.2	8,391	5.6
MA	4,988	4.4	4,850	3.3
NV	4,511	4.0	6,601	4.4
IL	4,141	3.6	1,181	0.8
ME	1,240	1.1	1,543	1.0
Other Rec States	730	0.6	1,240	0.8
Rec State Total	67,643	59.4	123,891	83.2
Medical Only States	34,676	30.5	15,943	10.7
Canada	8,321	7.3	2,473	1.7
Other Countries	187	0.2	568	0.4
Other U.S. States	3,010	2.6	6,079	4.1
Total	$ 113,837	100.0 %	$ 148,954	100.0 %

The table below breaks down full year 2020 and 2019 revenue (in thousands) by product category.

PRODUCT CATEGORY	2020 Revenue	% of 2020 Revenue	2019 Revenue	% of 2019 Revenue
Vape	$ 73,712	64.8 %	$ 101,704	68.3 %
Packaging, Papers & Supplies	27,125	23.8	28,231	19.0
Energy and Natural Products	9,345	8.2	14,502	9.7
Services	3,655	3.2	4,517	3.0
	$ 113,837	100.0 %	$ 148,954	100.0 %

As the industry matures and as we continue to cross-sell deeper into our customer base, the size of our largest customers has increased by overall spend as well as by the number of items purchased. We believe this trend is likely to continue and will benefit our “one-stop-shop” strategy for our customers’ ancillary needs.

Our larger customers are purchasing an ever-increasing variety of products. Our ability to cross-sell SKUs allows us to secure improved pricing as a result of our increased scale and purchasing power, and enables us to develop deeper relationships with our customers.

Customer Concentration

We had one customer which accounted for approximately 10% of revenue, for the fiscal year ended August 31, 2020. We had two customers, which accounted for approximately 14% and 10% of revenue, respectively, for the fiscal year ended August 31, 2019.

Sources and Availability of Products

We source and purchase parts, products and accessories from different suppliers from time to time. We believe that we have maintained strong relationships with our suppliers. We expect that such relationships will continue into the foreseeable future, but we can provide no assurances that these relationships will continue. Based on our experience, we believe that adequate quantities of the raw materials that we use to manufacture our parts, products and accessories (*e.g.*, plastic resins) will continue to be available at market prices, but we can provide no assurances as to such availability or the prices for such materials.

Segments

We operate as one operating segment. As defined in ASC Topic 280, *Segment Reporting,* operating segments are components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker (our Chief Executive Officer), in deciding how to allocate resources and assess performance. Over the last five years, we have completed a number of acquisitions. These acquisitions have allowed us to expand our offerings, presence and reach in the legal cannabis and CBD industries. However, the majority of our offerings operate similarly, and our chief operating decision maker evaluates financial information and resources and assesses the performance of these resources on a consolidated basis.

Employees

As of the date of this filing, we have a total of 109 employees, of which 108 are considered full-time employees. Our employees work at our facilities located across the U.S. Our relations with employees remain satisfactory and there have been no significant work stoppages or other labor disputes.

Environmental Matters and Government Regulation

The U.S. Food and Drug Administration ("FDA") regulates the material content of direct-contact food and drug packages, including certain packages we sell pursuant to the Federal Food, Drug and Cosmetics Act. FDA can order a recall if the agency determines that there is a reasonable probability that the article is adulterated or misbranded under the FDCA and that the use of or exposure to such article will cause serious adverse health consequences or death. In addition to federal law, states, cities and other countries in which we sell our products may impose similar laws. The majority of our products do not come into direct contact with food, as our customers typically package their food products in inner packaging, utilizing our products as an outer packaging.

Certain of our products are also regulated by the Consumer Product Safety Commission ("CPSC") pursuant to various federal laws, including the Consumer Product Safety Act and the Poison Prevention Packaging Act. The CPSC is the primary federal regulatory agency with jurisdiction over protecting the public from unreasonable risks of injury or death associated with the use of and exposure to consumer products. Consumer products are widely defined and likely include the type of packaging products we produce. When the CPSC determines there is an undue risk of harm associated with exposure to or use of a regulated product, it has wide administrative powers to require investigation of the product as well as disclosure of information related to sales and distribution of the product. Ultimately, the CPSC can require injunctive measures (e.g., product recalls and product refunds) as well as separate monetary sanctions, which are determined after considering relevant equitable factors including but not limited to the severity of the harm, the level of knowledge or intent associated with the violation, any history of violations, etc.

The plastics industry, which includes us, is subject to federal, state, local and foreign legislation designed to reduce solid waste by requiring, among other things, plastics to be degradable in landfills and contain minimum levels of recycled content, various recycling requirements, disposal fees, and limits on the use of plastic products. Certain states have also enacted legislation requiring products packaged in plastic containers to comply with standards intended to encourage recycling and increased use of recycled materials. In addition, various consumer and special interest groups have lobbied from time to time for the implementation of these and other similar measures. We believe that the legislation promulgated to date and such initiatives to date have not had a material adverse effect on us. There can be no assurance, however, that any such future legislative or regulatory efforts or future initiatives would not have a material adverse effect on us.

Thirty-four states, the District of Columbia and Canada currently have laws legalizing marijuana in some form. We do not believe that federal or any state laws prohibit us from selling our products or offering our services to cannabis operators. See, however, the risk factors in Item 1A - Risk Factors under the captions "Cannabis remains illegal under U.S. federal law, and therefore, strict enforcement of U.S. federal laws regarding cannabis would likely result in our inability and the inability of our customers to execute our respective business plans," "States which have not approved any legal sale of marijuana may seek to

overturn laws legalizing cannabis use in neighboring states, which if successful, could result in legal action against such neighboring states and have a significant negative effect on our business," and "We and our customers may have difficulty accessing the services of financial institutions and related financial services, which may make it difficult to sell our products and services."

Emerging Growth Company

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") and will continue to be an emerging growth company until August 31, 2021. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards. As a result, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Corporate and Available Information

Our principal corporate offices are located at 6261 Katella Avenue, Suite 250, Cypress, California 90630 and our telephone number is (714) 243-4311. Our internet address is ir.kushco.com. We make available on our website, free of charge, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC"). Our SEC reports can be accessed through the Investor Relations section of our website.

Item 1A. Risk Factors

Risks Related to Our Business

The COVID-19 pandemic has caused severe disruptions in the U.S. and global economies and financial markets and could potentially create widespread business continuity issues of an as yet unknown magnitude and duration.

The COVID-19 pandemic has severely impacted global economic activity and caused significant volatility and negative pressure in the financial markets. Many countries, including the United States, have reacted to the pandemic by instituting quarantines, mandating business and school closures and restricting travel. COVID-19 has had and could continue to have material and adverse effects on our ability to successfully operate due to, among other factors:

- a general decline in business activity, especially as it relates to our customers' expansion or consolidation activities;
- the continued classification of medical and/or recreational cannabis stores and/or dispensaries as "non-essential" in some states, which has resulted in these retail outlets having to temporarily shut down or materially adjust their operations;
- the destabilization of the markets, which could negatively impact our customer growth and access to capital, along with our customers' ability to make payments to us for their purchase orders;
- severe disruptions to and instability in the global financial markets, and deterioration in credit and financing conditions, which could affect our ability to access capital necessary to fund business operations or our ability to address maturing liabilities on a timely basis on favorable terms, or at all;
- the potential negative impact on the health of our personnel, or the personnel of our customers, vendors, and partners, especially if a significant number of them are impacted;
- our inability to ensure business continuity;
- a material disruption in our supply chain, which has affected and could continue to affect our ability to source products from vendors on a timely basis or on favorable terms; and
- the rapid development and fluidity of this situation makes it difficult to predict the full extent of the impact of COVID-19 on our business and operations. We will continue to assess the impact of COVID-19 on our business.

If we do not successfully generate additional products and services, or if such products and services are developed but not successfully commercialized, we could lose revenue opportunities. Our future success depends on our ability to grow and expand our customer base. Our failure to achieve such growth or expansion could materially harm our business.

Our future success depends, in part, on our ability to expand our product and service offerings. To that end we have engaged in the process of identifying new opportunities to provide additional products and related services to our customers. The processes of identifying and commercializing new products is complex and uncertain, and if we fail to accurately predict customers' changing needs and emerging trends, our business could be harmed. We have already and may continue to commit significant resources to commercializing new products before knowing whether our investments will result in products the market will accept. Furthermore, we may not execute successfully on commercializing those products because of errors in product planning or timing, technical hurdles that we fail to overcome in a timely fashion, or a lack of appropriate resources. This could result in competitors providing those solutions before we do and a reduction in our net sales and earnings.

The success of new products depends on many factors, including proper new product definition, timely completion, and introduction of these products, differentiation of new products from those of our competitors, and market acceptance of these products. There can be no assurance that we will successfully identify additional new product opportunities, develop and bring new products to market in a timely manner, or achieve market acceptance of our products or that products and technologies developed by others will not render our products or technologies obsolete or noncompetitive.

To date, our revenue growth has been derived from the sale of our products and services. Our success and the planned growth and expansion of our business depend on us achieving greater and broader acceptance of our products and services and expanding our customer base. There can be no assurance that customers will purchase our products or services or that we will continue to expand our customer base. If we are unable to effectively market or expand our product offerings, we will be unable to grow and expand our business or implement our business strategy. This could materially impair our ability to increase sales and revenue and materially and adversely affect our margins, which could harm our business and cause our stock price to decline.

Our suppliers could fail to fulfill our orders for parts used to assemble our products, which would disrupt our business, increase our costs, harm our reputation, and potentially cause us to lose our market.

We depend on third party suppliers around the world, including in China, for materials used to assemble our products. These suppliers could fail to produce products to our specifications or in a workmanlike manner and may not deliver the materials or products on a timely basis. Our suppliers may also have to obtain inventories of the necessary parts and tools for production. Any change in our suppliers' approach to resolving production issues could disrupt our ability to fulfill orders. If we are required to find new suppliers, our business may be disrupted and orders may be delayed if we are unable to timely secure their replacements, Such disruptions in our business and/or delays in fulfilling orders could harm our reputation and could potentially cause us to lose our market.

If significant tariffs or other restrictions are placed on our goods imported into the United States or Canada from China or any related counter-measures are taken by China, or if such tariffs are increased, our revenue, financial condition, and results of operations may be materially harmed.

If significant tariffs or other restrictions are placed on goods imported into the United States or Canada from China or any related countermeasures are taken by China, our revenue and results of operations may be materially harmed. The Trump Administration has altered trade terms between China and the United States, including by limiting trade with China and/or imposing additional tariffs on imports from China. In August 2018 The U.S. Trade Representative imposed additional duties of 25% on certain goods from China. Thereafter, in September 2018, the U.S. Trade Representative imposed additional duties of 10% on a variety of other goods imported from China. In September 2019 the 10% additional tariff was raised to 25% on the affected goods. These additional 25% tariffs apply primarily to our vaporizer and vaporizer accessory products, and as a result, the cost of our products may increase. In addition, any such additional tariffs may also make our products more expensive for consumers, which may reduce consumer demand. We may need to offset the financial impact of thee tariffs by, among other things, moving our product manufacturing to other countries where feasible, modifying other business practices or raising prices. If we are not successful in offsetting the impact of any such tariffs, our revenue, gross margins, and operating results may be adversely affected.

Our inability to effectively protect our intellectual property would adversely affect our ability to compete effectively, our revenue, our financial condition, and our results of operations.

We may be unable to obtain intellectual property rights to effectively protect our branding, products, and other intangible assets. Our ability to compete effectively may be affected by the nature and breadth of our intellectual property rights. While we intend to defend against any threats to our intellectual property rights, there can be no assurance that any such actions will adequately protect our interests. If we are unable to secure intellectual property rights to effectively protect our branding, products, and other intangible assets, our revenue and earnings, financial condition, or results of operations could be adversely affected.

We also often rely on non-disclosure and non-competition agreements to protect portions of our intellectual property portfolio. There can be no assurance that these agreements will not be breached, that we will have adequate remedies for any breach, that third parties will not otherwise gain access to our trade secrets or proprietary knowledge, or that third parties will not independently develop competitive products with similar intellectual property.

We could incur substantial liabilities from any product liability lawsuits successfully brought against us.

We face an inherent risk of product liability. For example, we could be sued if any product we sell allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. Claims could also be asserted under state consumer protection acts.

While we have not been a party to any product liability litigation and do not ourselves manufacture any products, several lawsuits have been brought against manufacturers and sellers of vaporizers and other smokeless products for injuries to health allegedly caused by use of such products. We may be subject to similar claims in the future relating to vaporizer products that we sell. We may also be named as a defendant in product liability litigation against one of our suppliers by association, including in class action lawsuits. In addition, we may see increasing litigation over our vaporizer products. If such lawsuits are filed against us in the future, we could incur substantial costs, including costs to defend the cases and possible damages awards.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit sales of our products. If we are unable to successfully defend future lawsuits against us, we could face at least the following potential consequences:

- decreased demand for our products;
- injury to our reputation;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to users of our products;
- product recalls or withdrawals;
- loss of revenue; and
- a decline in our stock price

In addition, while we continue to take what we believe are appropriate precautions, we may be unable to avoid significant liability if any product liability lawsuit is brought against us.

There is uncertainty regarding the regulation of vaporization products and certain other consumption accessories. Increased regulatory compliance burdens and recent temporary bans on the sales of certain cannabis vaporization products could have a material adverse impact on our business development efforts and our operations.

There is uncertainty regarding whether and in what circumstances federal, state, or local regulatory authorities will seek to develop and enforce regulations relative to vaporizer hardware and accessories that can be used to vaporize cannabis and/or tobacco. Further, it remains to be seen whether current or future regulations relating to tobacco vaporization products would also apply to cannabis vaporization products and related consumption accessories.

There has been increasing activity on the federal, state, and local levels with respect to scrutiny of vaporizer products. Federal, state, and local governmental bodies across the United States have indicated that vaporization products and certain other consumption accessories may become subject to new laws and regulations at the state and local levels.

The application of any new laws or regulations, including bans on sale, that may be adopted and/or maintained, at a federal, state, or local level, directly or indirectly implicating cannabis vaporization products or consumption accessories could limit our ability to sell such products, result in additional compliance expenses, and require us to change our labeling and methods of distribution, any of which could have a material adverse effect on our business, results of operations and financial condition.

The scientific community has not yet extensively studied the long-term health effects of the use of vaporizer products.

Cannabis vaporizers and related products were recently developed and therefore the scientific community has not had a sufficient period of time to study the long-term health effects of their use. If the scientific community were to determine conclusively that use of any or all of these products poses long-term health risks, market demand for these products and their use could materially decline. Such a determination could also lead to litigation and significant regulation. Loss of demand for our product, product liability claims, and increased regulation stemming from unfavorable scientific studies on these products could have a material adverse effect on our business, results of operations, and financial condition.

Our inability to effectively manage our growth could harm our business and materially and adversely affect our operating results and financial condition.

Our strategy envisions growing our business. We are actively expanding our product, sales, administrative and marketing operations. Any growth in or expansion of our business is likely to continue to place a strain on our management and administrative resources, infrastructure and systems. As with other growing businesses, we expect that we will need to further refine and expand our business development capabilities, our systems and processes and our access to financing sources. We also continue to hire, train, supervise, and manage a significant number of new employees. These processes are time consuming and expensive, will increase management responsibilities and will divert management attention. We cannot assure that we will be able to:

- expand our products effectively or efficiently or in a timely manner;
- allocate our human resources optimally;
- meet our capital needs;
- identify and hire qualified employees or retain valued employees; or
- effectively incorporate the components of any business or product line that we may acquire in our effort to achieve growth.

Our inability or failure to manage our growth and expansion effectively could harm our business and materially and adversely affect our operating results and financial condition.

We face risks associated with strategic acquisitions.

Since our inception we have strategically acquired several businesses, and plan to continue to make strategic acquisitions, some of which may be material. These acquisitions may involve a number of financial, accounting, managerial, operational, legal, compliance and other risks and challenges, including the following, any of which could adversely affect our results of operations:

- Any acquired business could under-perform relative to our expectations and the price that we paid for it, or not perform in accordance with our anticipated timetable;
- We may incur or assume significant debt in connection with our acquisitions;
- Acquisitions could cause our results of operations to differ from our own or the investment community's expectations in any given period, or over the long term; and
- Acquisitions could create demands on our management that we may be unable to effectively address, or for which we may incur additional costs.

Additionally, following any business acquisition, we could experience difficulty in integrating personnel, operations, financial and other systems, and in retaining key employees and customers.

We may record goodwill and other intangible assets on our consolidated balance sheet in connection with our acquisitions. If we are not able to realize the value of these assets, we may be required to incur charges relating to the impairment of these assets, which could materially impact our results of operations.

We are subject to cyber-security risks, including those related to customer, employee, vendor or other company data and including in connection with integration of acquired businesses and operations.

We use information technologies to securely manage operations and various business functions. We rely on various technologies, some of which are managed by third parties, to process, transmit and store electronic information, and to manage or support a variety of business processes and activities, including reporting on our business and interacting with customers, vendors and employees. In addition, we collect and store certain data, including proprietary business information, and may have access to confidential or personal information that is subject to privacy and security laws, regulations and customer-imposed controls. Our systems are subject to repeated attempts by third parties to access information or to disrupt our systems. Despite our security design and controls, and those of our third-party providers, we may become subject to system damage, disruptions or shutdowns due to any number of causes, including cyber-attacks, breaches, employee error or malfeasance, power outages, computer viruses, telecommunication or utility failures, systems failures, service providers, natural disasters or other

catastrophic events. It is possible for such vulnerabilities to remain undetected for an extended period. We may face other challenges and risks as we upgrade and standardize our information technology systems as part of our integration of acquired businesses and operations. We have contingency plans in place to prevent or mitigate the impact of these events, however, these events could result in operational disruptions or the misappropriation of sensitive data, and depending on their nature and scope, could lead to the compromise of confidential information, improper use of our systems and networks, manipulation and destruction of data, defective products, production downtimes and operational disruptions and exposure to liability. Such disruptions or misappropriations and the resulting repercussions, including reputational damage and legal claims or proceedings, may adversely affect our results of operations, cash flows and financial condition, and the trading price of our common stock.

This risk is enhanced in certain jurisdictions with stringent data privacy laws and, as we expand our products, offerings, and operations domestically and internationally, we may become subject to amended or additional laws that impose substantial additional obligations related to data privacy. For example, California adopted the California Consumer Privacy Act of 2018 ("CCPA"), which provides new data privacy rights for consumers and new operational requirements for businesses. The CCPA includes a statutory damages framework and private rights of action against businesses that fail to comply with certain CCPA terms or implement reasonable security procedures and practices to prevent data breaches. The CCPA went into effect in January 2020.

If we fail to retain key personnel and hire, train and retain qualified employees, we may not be able to compete effectively, which could result in reduced revenue or increased costs.

Our success is highly dependent on the continued services of key management and technical personnel. Our management and other employees may voluntarily terminate their employment at any time upon short notice. The loss of the services of any member of the senior management team, including our Chairman and Chief Executive Officer, Nick Kovacevich; our Chief Financial Officer, Stephen Christoffersen; our Chief Operating Officer, Rodrigo de Oliveira; or any of the managerial or technical staff may significantly delay or prevent the achievement of product development, our growth strategies and other business objectives. Our future success will also depend on our ability to identify, recruit and retain additional qualified technical and managerial personnel. We operate in several geographic locations where labor markets are particularly competitive, where demand for personnel with these skills is extremely high and is likely to remain high. As a result, competition for qualified personnel is intense, particularly in the areas of general management, finance, engineering and science, and the process of hiring suitably qualified personnel is often lengthy and expensive and may become more expensive in the future. If we are unable to hire and retain a sufficient number of qualified employees, our ability to conduct and expand our business could be seriously reduced.

Our operating results, including net sales, gross margin and net income (loss), as well as our stock price have fluctuated in the past, and our future operating results will continue to be subject to quarterly and annual fluctuations based upon numerous factors, including those discussed in this Item 1A and throughout this report. Our stock price will continue to be subject to daily fluctuations as well. Our future operating results and stock price may not follow any past trends or meet our guidance and expectations.

Our net sales and operating results, net income (loss) and operating expenses, and our stock price have fluctuated in the past and may fluctuate significantly from quarter to quarter and from year to year. We believe a number of factors, many of which are outside of our control, could cause these fluctuations and make them difficult to predict, including:

- fluctuations in demand for our products or downturns in the industries that we serve;
- our ability to manage our suppliers across our diverse product lines, including our ability to successfully procure products from various locations at the quantity, quality and price desired;
- our ability to develop, introduce, manufacture and ship new and enhanced products in a timely manner without defects and the rate of market acceptance of our new products;
- introductions of new products and product enhancements by our competitors, entry of new competitors into our markets, pricing pressures and other competitive factors;
- our ability and the ability of our contractual counterparts to comply with the terms of our contracts;
- rescheduling of shipments or cancellation of orders by our customers;
- the ability of our customers to access applicable credit markets and to pay for our products and services;
- our customers' ability to manage their susceptibility to adverse economic conditions;

- our ability to control expenses, including without limitation, costs and expenses associated with acquisition related activities;
- our ability to meet our expectations and forecasts and those of public market analysts and investors;
- damage to our reputation as a result of coverage in social media, Internet blogs or other media outlets;
- managing our employees and third-party representatives, including distributors, compliance with our internal controls and applicable laws;
- costs, expenses and damages arising from litigation; and
- currency fluctuations and stability, in particular the Chinese RMB and the U.S. dollar as compared to other currencies.

Our expenses for any given quarter are typically based on expected sales and if sales are below expectations in any given quarter, the adverse impact of the shortfall on our operating results may be magnified by our inability to adjust spending quickly enough to compensate for the shortfall. We also base our inventory levels on our forecasted product mix for the quarter. If the actual product mix varies significantly from our forecast, we may not be able to fill some orders during that quarter, which would result in delays in the shipment of our products. Accordingly, variations in timing of sales, particularly for our higher priced, higher margin products, may cause significant fluctuations in quarterly operating results.

Due to these and other factors, such as varying product mix, quarter-to-quarter and year-to-year comparisons of our historical operating results may not be meaningful. You should not rely on our results for any quarter or year as an indication of our future performance. Our operating results in future quarters and years may be below public market analysts' or investors' expectations, which would likely cause the price of our stock to fall. In addition, over the past several years, U.S. and global equity markets have experienced significant price and volume fluctuations that have affected the stock prices of many companies involved in the cannabis industry as well as in and outside our industry. There has not always been a direct correlation between this volatility and the performance of companies subject to these stock price fluctuations. These factors, as well as general economic and political conditions may have a material adverse effect on the market price of our stock in the future.

We may need additional capital in the future, and we may be unable to secure additional funding in the future or to obtain such funding on favorable terms.

Our inability to raise capital to finance our operations could materially limit our growth. Historically, we have raised capital through the sale of equity securities. To the extent that we raise additional equity capital, existing shareholders will experience dilution in the voting power and ownership of their common stock, and earnings per share, if any, will be negatively impacted.

We are a party to a revolving credit facility (the “Monroe Revolving Credit Facility”) with Monroe Capital Management Advisors, LLC (“Monroe”), which allows us to borrow up to $35.0 million, subject to the terms and conditions of the financing agreement. Any reductions in our available borrowing capacity under the Monroe Revolving Credit Facility, or our inability to renew or replace the Monroe Revolving Credit Facility or the senior note (the “New Senior Note”) to HB Sub Fund II LLC (“HB Sub Fund”), when needed or when business conditions warrant, could have a material adverse effect on our business, financial condition and results of operations. Further, any additional borrowings to finance operations could make us more vulnerable to a downturn in economic conditions or increases in interest rates on borrowings that are subject to interest rate fluctuations.

The amount and timing of our additional financing needs will vary based on among other things, timing of new product launches, investments and/or acquisitions, and the amount of cash flow from our operations. If our resources are insufficient to satisfy our cash requirements, we may seek to issue additional equity or debt securities or to obtain additional financing. If our cash flow from operations is insufficient to meet our debt service requirements, we could be required to sell additional equity securities, refinance our obligations, or dispose of assets in order to meet these requirements. There can be no assurance that any financing will be available to us when needed or will be available on terms acceptable to us. In addition, under the terms of our Amended Senior Note with HB Sub Fund, HB Sub Fund has the right to acquire 100% of any debt issuance and 15% of any equity issuance extended by the Company, which right could make it more difficult for us to complete a financing transaction. Our failure to obtain sufficient financing on favorable terms and conditions could have a material adverse effect on our growth prospects and our business, financial condition and results of operations.

The Financing Agreement for the Monroe Revolving Credit Facility and New Senior Note with HB each contains financial and operating covenants that may restrict our business and financing activities.

The Financing Agreement and the New Senior Note each restricts, among other things, our ability to:

- make investment in or merge with or acquire all or substantially all of the assets or capital stock of another party;
- incur, assume, guarantee or cancel certain indebtedness;
- enter certain transactions with related parties;
- incur or assume any liens upon or with respect to any of our properties;
- make certain change in business objectives, purposes of operations; and
- sell, transfer, issue, convey, assign or otherwise dispose of assets or properties, subject to certain exceptions.

The financial and operating restrictions and covenants contained in the Financing Agreement and the New Senior Note, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control and we may not be able to meet those covenants. A breach of any of the covenants under the Financing Agreement and/or the New Senior Note, or either lender declaring that a material adverse event has occurred, could result in a default under the Financing Agreement and/or the New Senior Note, which could cause all of the outstanding indebtedness under the Monroe Revolving Credit Facility and/or the New Senior Note, as applicable, to become immediately due and payable.

If we default on our obligations to HB Sub Fund, HB Sub Fund could accelerate our obligations under the Senior Note and exercise remedies including their right to collect on our outstanding obligations, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations.

We have issued a senior note to HB Sub Fund in the principal amount of $22.0 million. If we default on our obligations under the Senior Note, or fail to pay our obligations under the Senior Note in full upon maturity, HB Sub Fund could exercise remedies to enforce such obligations, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations. Pursuant to the terms of that certain Intercreditor Agreement, by and among the Company, HB Sub Fund, and Monroe, dated August 21, 2019, HB Sub Fund has agreed, among other things, that it will not seek payment on the Senior Note based on a default under either the Financing Agreement or the Senior Note for a period of up to 45 days.

Increases in interest rates would increase the cost of servicing our debt and could reduce our profitability.

A significant portion of our outstanding debt, including amounts under the Monroe Revolving Credit Facility, bears interest at variable rates and expose us to interest rate risk. As a result, increases in interest rates would increase the cost of servicing our debt and could materially reduce our profitability and cash flows.

Uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR after 2021 may adversely affect the market value of our current or future debt obligations, including under the Monroe Revolving Credit Facility.

On July 27, 2017, the U.K. Financial Conduct Authority announced that it intends to stop persuading or compelling banks to submit LIBOR rates after 2021. As a result, LIBOR may be discontinued by 2021. While there is no consensus on what rate or rates may become accepted alternatives to LIBOR, the Alternative Reference Rates Committee, a steering committee comprised of U.S. financial market participants, selected and the Federal Reserve Bank of New York started in May 2018 to publish the Secured Overnight Finance Rate (“SOFR”) as an alternative to LIBOR. SOFR is a broad measure of the cost of borrowing cash in the overnight U.S. treasury repo market. At this time, it is impossible to predict whether the SOFR or another reference rate will become an accepted alternative to LIBOR. The manner and impact of this transition may materially adversely affect the trading market for LIBOR-based securities, as well as the applicable interest rate on and the amount of interest paid on our current or future debt obligations, including the Monroe Revolving Credit Facility.

Charges to earnings resulting from the application of the acquisition method of accounting to our various acquisitions may adversely affect our results of operations. If our goodwill or intangible assets become impaired, we may be required to record a significant charge to earnings and our ability to borrow under our asset-based Monroe Revolving Credit Facility may be significantly impaired.

In accordance with generally accepted accounting principles, we have accounted for acquisitions using the acquisition method of accounting. Under the acquisition method of accounting, we allocate the total purchase price of an acquired company's net tangible and identifiable intangible assets based upon their estimated fair values at the acquisition date. We record the excess of the purchase price over net tangible and identifiable intangible assets as goodwill. We have incurred and will continue to incur additional depreciation and amortization expense over the useful lives of certain of the net tangible and intangible assets we have acquired. In addition, to the extent the value of goodwill or intangible assets with indefinite lives becomes impaired, we may be required to incur material charges relating to the impairment of those assets. These depreciation, amortization and potential impairment charges could have a material impact on our results of operations.

Under accounting principles generally accepted in the United States, we review our 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. Factors that may be considered in determining whether a change in circumstances indicating that the carrying value of our goodwill or other intangible assets may not be recoverable include declines in our stock price and market capitalization or future cash flows projections. A decline in our stock price, or any other adverse change in market conditions, particularly if such change has the effect of changing one of the critical assumptions or estimates we used to calculate the estimated fair value of our reporting units, could result in a change to the estimation of fair value that could result in an impairment charge. Any such material charges, whether related to goodwill or purchased intangible assets, may have a material negative impact on our financial and operating results. In addition, under our asset-based Monroe Revolving Credit Facility, our lenders can impose additional reserves, which would reduce our ability to borrow and access to capital to operate our business.

Risks Relating to Our Industry

Cannabis remains illegal under U.S. federal law, and therefore, strict enforcement of U.S. federal laws regarding cannabis would likely result in our inability and the inability of our customers to execute our respective business plans.

Cannabis is a Schedule I controlled substance under the Controlled Substances Act of 1970 (the "CSA"), as amended. Even in those jurisdictions in which adult-recreational and medical use of cannabis has been legalized at the state level, the possession, use and cultivation all remain violations of federal law that are punishable by imprisonment, substantial fines and forfeiture. Moreover, individuals and entities may violate U.S. federal law if they intentionally aid and abet another in violating these federal controlled substance laws or conspire with another to violate them. The U.S. Supreme Court has ruled in United States v. Oakland Cannabis Buyers' Coop. and Gonzales v. Raich that it is the federal government that has the right to regulate and criminalize the sale, possession and use of cannabis, even for medical purposes. We would likely be unable to execute our business plan if the federal government were to strictly enforce federal law regarding cannabis.

In January 2018, the Department of Justice (the "DOJ") rescinded certain memoranda, including the so-called "Cole Memo" issued on August 29, 2013 under the Obama Administration, which had characterized enforcement of federal cannabis prohibitions under the CSA to prosecute those complying with state regulatory systems allowing the use, manufacture and distribution of medical cannabis as an inefficient use of federal investigative and prosecutorial resources when state regulatory and enforcement efforts are effective with respect to enumerated federal enforcement priorities under the CSA. The impact of the DOJ's rescission of the Cole Memo and related memoranda is unclear, but may result in the DOJ increasing its enforcement actions against the state-regulated cannabis industry generally.

Congress previously enacted an omnibus spending bill that includes a provision prohibiting the DOJ (which includes the Drug Enforcement Agency (the "DEA")) from using funds appropriated by that bill to prevent states from implementing their medical-use cannabis laws. This provision is currently set to expire on December 31, 2020, unless further extended by Congressional action. In USA vs. McIntosh, the U.S. Court of Appeals for the Ninth Circuit held that this provision prohibits the DOJ from spending funds from relevant appropriations acts to prosecute individuals who engage in conduct permitted by state medical-use cannabis laws and who strictly comply with such laws. However, the Ninth Circuit's opinion, which only applies to the states of Alaska, Arizona, California, Hawaii, and Idaho, also held that persons who do not strictly comply with all state laws and regulations regarding the distribution, possession and cultivation of medical-use cannabis have engaged in conduct that is unauthorized, and in such instances the DOJ may prosecute those individuals.

Additionally, financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statutes and the Bank Secrecy Act. The penalties for violation of these laws include imprisonment, substantial fines and forfeiture. Prior to the DOJ's rescission of the "Cole Memo", supplemental guidance from the DOJ issued under the Obama administration directed federal prosecutors to consider the federal enforcement priorities enumerated in the "Cole Memo" when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. With the rescission of the "Cole Memo," there is increased uncertainty and added risk that federal law enforcement authorities could seek to pursue money laundering charges against entities or individuals engaged in supporting the cannabis industry.

Federal prosecutors have significant discretion and no assurance can be given that the federal prosecutor in each judicial district where we operate will not choose to strictly enforce the federal laws governing cannabis production or distribution. Any change in the federal government's enforcement posture with respect to state-licensed cultivation of cannabis, including the enforcement postures of individual federal prosecutors in judicial districts where we operate, would result in our inability to execute our business plan, and we would likely suffer significant losses, which would adversely affect the trading price of our securities. We have not requested or obtained any opinion of counsel or ruling from any authority to determine if our operations are in compliance with or violate any state or federal laws or whether we are assisting others to violate a state or federal law. If our operations are deemed to violate any laws or if we are deemed to be assisting others to violate a state or federal law, any resulting liability could cause us to modify or cease our operations.

States that have not approved any legal sale of marijuana may seek to overturn laws legalizing cannabis use in neighboring states, which if successful, could result in legal action against such neighboring states and have a significant negative effect on our business.

Due to variations in state law among states sharing borders, certain states which have not approved any legal sale of marijuana may seek to overturn laws legalizing cannabis use in neighboring states. For example, in December 2014, the attorneys general of Nebraska and Oklahoma filed a complaint with the U.S. Supreme Court against the state of Colorado arguing that the Supremacy Clause (Article VI of the Constitution) prohibits Colorado from passing laws that conflict with federal anti-drug laws and that Colorado's laws are increasing marijuana trafficking in neighboring states that maintain marijuana bans, thereby putting pressure on such neighboring states' criminal justice systems. In March 2016 the Supreme Court, voting 6-2, declined to hear this case, but there is no assurance that it will not do so in the future. Additionally, nothing prevents these or other attorneys general from using the same or a similar cause of action for a lawsuit in a lower federal or other court.

Previously, the Supreme Court has held that drug prohibition is a valid exercise of federal authority under the commerce clause; however, it has also held that an individual state is not required to adopt or enforce federal laws with which it disagrees. If the Supreme Court rules that a legal cannabis state's legislation is unconstitutional, that could result in legal action against other states with laws legalizing medical and/or recreational cannabis use. Successful prosecution of such legal actions by non-marijuana states could have significant negative effects on our business.

We and our customers may have difficulty accessing the service of banks, which may make it difficult to sell our products and services.

Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statute and the U.S. Bank Secrecy Act. Guidance issued by the Financial Crimes Enforcement Network ("FinCen"), a division of the U.S. Department of the Treasury, clarifies how financial institutions can provide services to cannabis-related businesses consistent with their obligations under the Bank Secrecy Act. Furthermore, supplemental guidance from the DOJ directs federal prosecutors to consider the federal enforcement priorities enumerated in the Cole Memo when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. Nevertheless, banks remain hesitant to offer banking services to cannabis-related businesses. Consequently, those businesses involved in the cannabis industry continue to encounter difficulty establishing banking relationships. Our inability to maintain our current bank accounts would make it difficult for us to operate our business, increase our operating costs, and pose additional operational, logistical and security challenges and could result in our inability to implement our business plan.

We are subject to certain federal regulations relating to cash reporting.

The Bank Secrecy Act, enforced by FinCen, requires us to report currency transactions in excess of $10,000, including identification of the customer by name and social security number, to the IRS. This regulation also requires us to report certain suspicious activity, including any transaction that exceeds $5,000 that we know, suspect or have reason to believe involves funds from illegal activity or is designed to evade federal regulations or reporting requirements and to verify sources of funds.

Substantial penalties can be imposed against us if we fail to comply with this regulation. If we fail to comply with these laws and regulations, the imposition of a substantial penalty could have a material adverse effect on our business, financial condition and results of operations.

The federal and state regulatory landscape regarding products containing CBD is uncertain and evolving, and new or changing laws or regulations relating to industrial hemp and industrial hemp-derived products could have a material adverse effect on our business, financial condition and results of operations.

We facilitate the sale and distribution of products containing CBD, a form of cannabis. The Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), which was signed into law by President Trump on December 20, 2018, removed the classification of industrial hemp (defined in the 2018 Farm Bill as Cannabis sativa L. with a delta-9 tetrahydrocannabinol ("THC") concentration of not more than 0.3 percent on a dry weight basis), which includes industrial hemp-based CBD, as a controlled substance under the CSA. The declassification of industrial hemp opened the path for broad commercial cultivation of the crop and, among other things, the use of its byproducts in consumer goods, including CBD.

Although industrial hemp has been removed from the list of "controlled substances" under the CSA, some states still classify industrial hemp and its byproducts as a controlled substance under applicable state criminal laws, making the possession, sale, and distribution of any such products illegal under such state laws. Although most states have implemented changes to their criminal laws in response to the 2018 Farm Bill, there can be no assurance that every state will follow suit. Additionally, even in states that have changed their criminal laws, many states have adopted strict and nuanced labeling and other requirements for products containing CBD. As a result, applicable state and local laws or regulations regarding industrial hemp-based CBD and products containing industrial hemp-based CBD could restrict the CBD brokerage services we offer or impose additional compliance costs on us or our customers.

On August 20, 2020, the DEA issued interim final rules codifying the amendments to the CSA resulting from the 2018 Farm Bill. Among other things, the DEA rules state that any hemp derivative, extract, or product that exceeds the 0.3 percent THC concentration remains a Schedule I controlled substance, even if the plant from which it was derived contained 0.3 percent or less THC on a dry weight basis (i.e., hemp). The result of this rule making is that the DEA may consider any hemp extract that temporarily exceeds 0.3 percent THC concentration during the extraction process to be a Schedule I controlled substance, even if the THC concentration is subsequently reduced to 0.3 percent or less. These rules are currently effective but are subject to adoption of final rulemaking by the DEA. Violations of applicable laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our operations.

FDA regulation regarding the sale or distribution of products containing CBD could make it difficult for our customers to operate their business, increase their operating costs, and pose additional operational, logistical and security challenges, which in turn could have a material adverse effect on our business, financial condition and results of operations.

FDA has the authority to regulate the production and sale of hemp pursuant to the FDCA, and section 351 of the Public Health Service Act (addressing the regulation of biological products). Shortly after the 2018 Farm Bill became law, the FDA issued a statement that any cannabis product, whether derived from industrial hemp or otherwise, marketed with a disease claim (e.g., a claim of therapeutic benefit or disease prevention) must be approved by FDA for its intended use through one of the drug approval pathways prior to it being introduced into interstate commerce. FDA has approved Epidiolex, which contains a purified form of the drug substance CBD for the treatment of seizures associated with Lennox-Gastaut syndrome, Dravet syndrome and tuberous sclerosis complex in patients 1 year of age or older. FDA has not approved any other drug products containing CBD.

Following the passage of the 2018 Farm Bill, FDA also stated that introducing or delivering for introduction into interstate commerce food or beverages containing added CBD (or THC), regardless of source, is currently illegal under the FDCA. In December 2018, FDA completed its evaluation of three generally recognized as safe (GRAS) notices for three hemp seed-derived food ingredients: hulled hemp seed, hemp seed protein powder, and hemp seed oil and determined that these products can be legally marketed in human foods for the uses described in those notices, provided that they comply with all other requirements. In November 2019, FDA determined that based on the lack of scientific information supporting the safety of CBD in food, the agency could not conclude that CBD is GRAS for its use in human or animal food. Additionally, FDA has concluded that THC and CBD products cannot lawfully be marketed as dietary supplements.

The FDA has since indicated that it would issue regulations regarding the addition of food, beverages, and dietary supplements containing CBD, and conducted a public hearing on May 31, 2019 to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis- derived compounds. On December 20, 2019, the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), was enacted into law, which

provided FDA with appropriations under Division B, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 2020, for the fiscal year ending September 30, 2020. The accompanying Joint Explanatory Statement directed FDA to provide a report within 60 days of enactment regarding the Agency's progress toward obtaining and analyzing data to help determine a policy of enforcement discretion and the process in which CBD meeting the definition of hemp will be evaluated for use in FDA-regulated products. FDA issued its report in March 2020 and indicated that it is still working to develop a plan "that includes evaluating issuance of a risk-based enforcement policy that would provide greater transparency and clarity regarding FDA's enforcement priorities while FDA potentially engages in the process of a rulemaking." FDA repeated concerns over possible safety risks and a lack of data and encouraged and supported research to further explore the safety and therapeutic potential of CBD and other cannabis compounds. FDA noted its intention to continue taking action to address violations that it feels pose the greatest risk of harm to the public and indicated that it is actively working to evaluate potential lawful pathways for the marketing of CBD.

Any regulations that the FDA issues in the future relating to the sale of food, beverages, and dietary supplements containing CBD in interstate commerce could make it more difficult for our customers to operate their business; increase their operating costs; and pose additional operational, logistical and security challenges, which in turn could have a material adverse effect on our business, financial condition and results of operations.

If commercial cultivation of industrial hemp is deemed to be a violation of federal law, we may be subject to federal enforcement actions, which could adversely affect our business and harm our reputation and brand.

The 2018 Farm Bill empowers the United States Department of Agriculture (the "USDA") to implement a program to certify state and Indian tribe permitting for the commercial cultivation of industrial hemp. On October 29, 2019, the USDA released the text of its interim final rule for regulations establishing such a program, which include specific requirements about permitting of cultivators, testing of cultivated hemp, and land maintenance, among other things (the "Interim Rules"). Such Interim Rules became effective on November 1, 2019 by their terms; however, the USDA has invited public comment on the Interim Rules, in anticipation of final rules to be implemented by the USDA in the future (the "Final Rules"). In September 2020, the USDA reopened the comment period for the rule. In October 2020, Congress passed a bill that includes a one-year deadline extension for states to file plans for regulating hemp.

Until commercial cultivators of industrial hemp receive permits for production under applicable state and Indian tribe laws that are implemented pursuant to the Interim Rules, any production of industrial hemp by such persons may be deemed to be in violation of federal law. In addition, any Final Rules implemented by the USDA may be different from the Interim Rules, making industrial hemp more difficult to cultivate and produce in compliance therewith.

We risk becoming subject to adverse publicity and costly federal enforcement actions should we decide to facilitate the sale and distribution of products containing industrial hemp-based CBD in the United States that is not grown in full compliance with the Interim Rules or the Final Rules (as applicable) and applicable state and/or Indian tribe permitting rules implemented pursuant to the Interim Rules or the Final Rules (as applicable). In addition, we risk that industrial hemp-based CBD products that we distribute do not fully comply with such Interim Rules or the Final Rules (as applicable), and state or Indian tribe permitting rules, despite the representations of the producers of such products. We may be required to expend significant resources in defending our company from actions resulting therefrom, which could adversely affect our business and results of operations and divert the attention of management. We may also incur the risk of sustaining considerable damage to our reputation and brand should we become party to federal enforcement actions resulting from the sale and distribution of products containing industrial hemp-based CBD that do not fully comply with the Interim Rules or the Final Rules (as applicable) and applicable state and/or Indian tribe permitting rules implemented pursuant to the Interim Rules or the Final Rules (as applicable).

Risks Relating to Our Internal Controls

If we fail to establish or maintain effective internal controls over financial reporting, we may be unable to accurately report our financial results or prevent fraud, and investor confidence and the market price of our common stock may, therefore, be adversely impacted.

Our reporting obligations as a public company place a significant strain on our management, operational and financial resources, and systems for the foreseeable future. Annually, we are required to prepare a management report on our internal controls over financial reporting containing our management's assessment of the effectiveness of our internal control over financial reporting. Management concluded that our internal controls over financial reporting were not effective as of August 31, 2020. We will cease to be an emerging growth company on August 31, 2021. Thereafter, our independent registered public accounting firm may be required to provide an attestation report on our internal control over financial reporting if we cease to

qualify as a smaller reporting company. Even if our management concludes that our internal controls over financial reporting are effective, our independent registered public accounting firm may disagree or may issue a report that is qualified if it believes that our controls or the level at which our controls are documented, designed, operated or reviewed are inadequate.

Our restatement of previously issued consolidated financial statements has resulted in significant legal and accounting expenditures to us and could result in further expenses, a loss of investor confidence, a negative impact on our stock price, and other risks.

As discussed in the Explanatory Note, Note 2, "Restatement" and in Note 18, "Quarterly Information (unaudited)" under Item 8 of the amendment to our Annual Report on Form 10-K for the year ended August 31, 2018, filed with the SEC on April 11, 2019, we concluded that our previously-issued consolidated financial statements for the fiscal years ended August 31, 2018 and 2017, and for each of the interim periods ended May 31, 2017, November 30, 2017, February 28, 2018, and May 31, 2018, should no longer be relied upon. The determination that these financial statements should no longer be relied upon and our decision to restate these financial statements was made following the identification of errors in the accounting of share-settled contingent consideration paid by us in connection with certain acquisitions. We filed restated consolidated financial statements with the SEC for all impacted periods on April 11, 2019 (the "Restatement").

We have incurred significant legal and accounting expenditures as a result of these misstatements and have become subject to a number of additional risks and uncertainties. We are a party to four shareholder derivative lawsuits and one class-action lawsuit relating to the Restatement. See Item 3. "Legal Proceedings" for additional information.

If we do not prevail in the shareholder litigation matters, we may be required to pay substantial damages or settlement costs. In addition, as a result of these misstatements, we may continue to be at risk for further government investigations, shareholder litigation, and additional accounting and legal fees in connection therewith, as well as loss of investor confidence in us, and a negative impact on our stock price.

We are remediating certain internal controls and procedures, which, if not successful, could result in additional misstatements in our financial statements negatively affecting our results of operations.

We are in the process of implementing certain remediation measures in response to the above-described financial misstatements. See Item 9A. "Controls and Procedures" of this Annual Report on Form 10-K for the year ended August 31, 2019 for a description of these remediation measures. To the extent these steps are not successful, not sufficient to correct our material weaknesses in internal controls over financial reporting, or are not completed in a timely manner, future financial statements may contain material misstatements and we could be required to restate our financial results. Any of these matters could adversely affect our business, reputation, revenues, results of operations, financial condition, and stock price, and limit our ability to access the capital markets through equity or debt issuances.

Risks Related to Ownership of our Securities

The trading market for our common stock is limited.

We are quoted on the OTCQX under the trading symbol "KSHB" and are not traded or listed on any securities exchange. The OTCQX is regarded as a junior trading venue. This may result in limited shareholder interest and lower prices for our common stock than might otherwise be obtained. In addition, it may be difficult for our shareholders to sell their shares without depressing the market price of our shares or at all. As a result of these and other factors, our shareholders may not be able to sell their shares. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter strategic partnerships or acquire companies or products by using our shares of common stock as consideration. If an active market for our common stock does not develop or is not sustained, it may be difficult for our shareholders to sell shares of our common stock.

Since our securities are currently quoted on the OTCQX, our stockholders may face significant restrictions on the resale of our securities due to state "Blue Sky" laws.

Each state has its own securities laws, often called "blue sky" laws, which (i) limit sales of securities to a state's residents unless the securities are registered in that state or qualify for an exemption from registration, and (ii) govern the reporting requirements for broker-dealers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or the transaction must be exempt from registration. The applicable broker must also be registered in that state. We do not know whether our common stock will be registered or exempt from registration under the laws of any state. Since our common stock is currently quoted on the OTCQX, a determination regarding registration

will be made by those broker-dealers, if any, who agree to serve as the market-makers for our common stock. There may be significant state blue sky law restrictions on the ability of investors to sell, and on purchasers to buy, our common stock. Investors should therefore consider the resale market for our common stock to be limited, as they may be unable to resell their common stock without the significant expense of state registration or qualification.

In the past, we have conducted private placements with accredited investors pursuant to Regulation D under the Securities Act. We filed Form Ds relating to such private placements with the SEC but have not made any notice filings with state securities regulators with respect to private placements conducted prior to June 2018. State securities regulators may assess penalties and fines on us in the future based on our failure to make such notice filings.

The application of the "penny stock" rules could adversely affect the market price of our common shares and increase your transaction costs to sell those shares.

The SEC has adopted Rule 3a51-1, which establishes the definition of a "penny stock," for the purposes relevant to us, as any equity security that has a market price of less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, Rule 15g-9 under the Exchange Act requires: (a) that a broker or dealer approve a person's account for transactions in penny stocks; and (b) the broker or dealer to receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

In order to approve a person's account for transactions in penny stocks, the broker or dealer must (i) obtain financial information and investment experience objectives of the person; and (ii) make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which, in highlight form sets forth: (A) the basis on which the broker or dealer made the suitability determination and (B) that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the "penny stock" rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Your percentage ownership will be diluted in the future.

Your percentage ownership will be diluted in the future as a result of equity awards that we expect will be granted to our directors, officers and employees, as well as any shares of common stock, or securities convertible into common stock, we issue in connection with future capital raising or strategic transactions. Our 2016 Stock Incentive Plan provides for the grant of equity-based awards to our directors, officers and consultants. The issuance of any shares of our stock will dilute the proportionate ownership and voting power of existing security holders.

Substantial sales of common stock have and may continue to occur, or may be anticipated, which have and could continue to cause our stock price to decline.

We expect that we will seek to raise additional capital from time to time in the future, which may involve the issuance of additional shares of common stock, or securities convertible into common stock. We cannot predict the effect, if any, that these sales, or anticipation of such sales, will have on the market price of our common stock. Any future sales of significant amounts of our common stock, or the perception in the market that this will occur, may result in a decline in the price of our common stock.

Our principal stockholders, executive officers, and directors own a significant percentage of our common stock and will be able to exert a significant control over matters submitted to the stockholders for approval.

Our officers and directors, and principal stockholders collectively own a significant percentage of our common stock. This significant concentration of share ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. These stockholders, if they acted together, could significantly influence all matters requiring stockholder approval, including the election of directors. The interests of these stockholders may not always coincide with the interests of other stockholders.

We do not intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividend on our common stock and do not currently intend to do so for the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Additionally, for so long as any loans under the Monroe Revolving Credit Facility or the New Senior Note remain outstanding, we would be required to obtain the prior written consent of Monroe or HB Sub Fund, as applicable, prior to declaring or paying any cash dividend or cash distribution on any of our capital stock. Therefore, the success of an investment in shares of our common stock will depend solely upon any future appreciation in their value. There is no guarantee that shares of our common stock will appreciate or even maintain the price at which our stockholders have purchased their shares.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties

At present, we do not hold title to any real property. All of our properties are leased or sub-leased. We do not have any mortgages, liens or encumbrances against any of our properties.

Our corporate headquarters is located at 6261 Katella Avenue, Suite 250, in Cypress, California, and consists of approximately 23,600 square feet of office space. The lease for this property expires in September 2025.

Our primary distribution center is located at 7375 Chapman Avenue in Garden Grove, California, and consists of approximately 45,917 square feet of primarily warehouse space. The lease for this property expires on August 1, 2023.

We lease a warehouse and distribution center consisting of approximately 13,600 square feet in Woodinville, Washington, which is utilized as a fulfillment and distribution center for the Pacific Northwest region. The lease for this property expires in January 2025.

We sublease a warehouse and distribution center consisting of approximately 66,300 square feet in Worcester, Massachusetts. The sublease for this property is set to expire in April 2022.

We also lease a warehouse and distribution center consisting of approximately 40,200 square feet in Taylor, Michigan. The lease for this property is set to expire in July 2024.

We believe that our properties and equipment are well-maintained, in good operating condition and adequate for our present needs and that suitable additional or alternative space will be available in the future on commercially reasonable terms.

Item 3. Legal Proceedings

We may be subject to legal proceedings and claims that arise in the ordinary course of our business.

During fiscal year 2019, lawsuits were filed in California federal and state court by various purported shareholders against, the Company, each of the current members of our Board of Directors, and certain of our current and former officers, alleging, among other things, certain federal securities law violations and/or related breaches of fiduciary duties in connection with the Restatement. In general, the lawsuits assert the same or similar allegations, including that the defendants artificially inflated the Company's securities prices by knowingly making materially false and misleading statements and omissions to the investing public about the Company's financial statements, business, operations, management, and internal controls. These lawsuits are described below.

May v. KushCo Holdings, Inc., et al., filed April 30, 2019, Case No. 8:19-cv-00798-JLS-KES, U.S. District Court for the Central District of California. This putative shareholder class action against the Company and certain of its current and former officers of the Company alleges violations of Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and seeks unspecified compensatory damages and other relief on behalf of a class of purchasers of the Company's securities between July 13, 2017 and April 9, 2019, inclusive. In September 2019, the Court appointed co-lead plaintiffs and co-lead counsel for the plaintiffs. The lead plaintiffs' amended complaint was filed in November 2019. In February 2020, the Company moved to dismiss the amended complaint. In September 2020, the Court granted the defendants' motion to dismiss

with leave to amend. On November 2, 2020, after the lead plaintiffs' failed to file an amended complaint, the Court entered judgment in favor of the defendants, dismissing the action with prejudice.

Salsberg v. Kovacevich, et al., filed May 24, 2019, Case No. 8:19-cv-00998-JLS-KES, U.S. District Court for the Central District of California and Neysmith v. Baum, et al., filed May 31, 2019, Case No. 8:19-cv-01070-JLS-KES, U.S. District Court for the Central District of California. This purported shareholder derivative action against certain current and former directors and officers of the Company alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and disgorgement of profits, benefits, and compensation obtained by the defendants from the alleged conduct, to be paid to the Company. In September 2019, the Court consolidated these cases. In December 2019, the Court ordered a stay of this action pursuant to a stipulation of the parties.

Savage v. Kovacevich, et al., filed June 14, 2019, Case No. 30-2019-01077191-CU-MC-NJC, Superior Court of California, County of Orange. This purported shareholder derivative action against certain current and former directors and officers of the Company alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and unspecified damages and restitution from the defendants, to be paid to the Company. In August 2019, the Court ordered a stay of this action pursuant to a stipulation of the parties.

Bruno, et al. v. Kovacevich, et al., filed September 26, 2019, Case No. A-19-802660-C, Eighth Judicial District Court of the State of Nevada and *Majchrzak v. Kovacevich, et al*., filed October 2, 2019, Case No. A-19-902945-B, First Judicial District Court of the State of Nevada. These purported shareholder derivative actions against certain current and former directors and officers allege, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant in each action and the plaintiffs seek, among other things, equitable relief and unspecified damages from the defendants, to be paid to the Company. In August 2020 and September 2020, the Court ordered stays of the Majchrzak action and the Bruno action, respectively, pursuant to the plaintiffs' unopposed motions.

In addition, after fiscal 2019, in October 2020, a purported Company shareholder filed a shareholder derivative action and putative class action complaint (*Choate v. Kovacevich, et al*., filed October 1, 2020, Case No. 8:20-cv-01904-JLS-KES, U.S. District Court for the Central District of California) against certain current Company directors. The suit alleges, among other things, breach of fiduciary duty with respect to the administration of the Company's 2016 Stock Incentive Plan. The Company is named as a nominal defendant. The suit seeks declaratory relief and, from the director defendants, unspecified compensatory damages and other relief.

Item 4. Mining Safety Disclosures

Not applicable.

PART II

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

Market Information

Our common stock is quoted on the OTCQX, under the symbol "KSHB". Our common stock was initially listed on the OTCQB on December 1, 2015 and transitioned to the OTCQX in May 2019. Any over-the-counter market quotations are based on inter-dealer bid and asked prices, without retail markup, mark-down or commission and may not represent actual transactions.

Holders

As of November 6, 2020, there were approximately 195 holders of record of our common stock. The actual number of shareholders is greater than this number of record holders, and includes shareholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include shareholders whose shares may be held in trust by other entities.

Dividends

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future.

Equity Compensation Plan Information

Information about our equity compensation plans is incorporated herein by reference to Item 12 of Part III of this Annual Report on Form 10-K.

Recent Sales of Unregistered Securities

None.

The Securities Enforcement and Penny Stock Reform Act of 1990

The SEC has adopted Rule 3a51-1, which establishes the definition of a "penny stock," for the purposes relevant to us, as any equity security that has a market price of less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, Rule 15g-9 requires:

- that a broker or dealer approve a person's account for transactions in penny stocks,
- the broker or dealer receives from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.
- In order to approve a person's account for transactions in penny stocks, the broker or dealer must:
- obtain financial information and investment experience objectives of the person, and
- make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which, in highlight form:

- sets forth the basis on which the broker or dealer made the suitability determination, and
- that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the "penny stock" rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Item 6. Selected Financial Data.

Not applicable.

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

Cautionary Statement Concerning Forward-Looking Statements

The following discussion summarizes the significant factors affecting the operating results, financial condition, liquidity and cash flows of our company as of and for the periods presented below. The following discussion and analysis 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. The statements in this discussion regarding industry outlook, our expectations regarding our future performance, liquidity and capital resources and all other non-historical statements in this discussion are forward-looking statements and are based on the current beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Annual Report, particularly in the section titled "Risk Factors."

Overview

KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) markets and sells a wide variety of ancillary products and services to customers operating in the regulated medical and adult recreational cannabis and hemp-derived CBD industries.

Our products primarily consist of bottles, jars, bags, tubes, containers, vape cartridges, vape batteries and accessories, labels and processing supplies, solvents, natural products, stainless steel tanks, and custom branded anti-counterfeit and authentication labels. We maintain relationships with a broad range of domestic and international manufacturers, which enables us to source a wide variety of products in a cost-effective manner and to pass such cost savings on to our customers. In addition to a complete product line, we have sophisticated labeling and customization capabilities, which allow us to add significant value to our customers' packaging and vape hardware design processes, enabling them to turn their packaging and branding into an effective marketing tool. As more MSOs, LPs, and leading brands seek ways to further differentiate their brands and product lines, our customization capabilities and premium customer service help us win new product opportunities with both existing and new customers. Our products are relied upon by brand owners, farmers, growers, processors, producers, distributors, and licensed medical and adult recreational cannabis retailers.

Our services primarily consist of retail services and hemp trading services, which focus on facilitating compliant hemp transactions for in-network, pre-qualified farmers and a pre-qualified buyer network. Our retail services division focuses on building distribution networks of compliant hemp-derived CBD brands across conventional and other retail channels, including convenience, pet care, and beauty channels.

As a leader in custom and child-resistant compatible packaging, exclusive vape products, and unique service offerings, such as our hemp trading and retail services, we serve as a "one- stop-shop" for our customers, combining creativity with compliance knowledge and experience to provide solutions in various stages of the cannabis and CBD supply chain. Due to the complementary nature of our product and service ecosystem, we are able to successfully cross- sell into our existing customer base, while attracting new customers who are looking to consolidate their vendors and partner with a trusted and established source for nearly all ancillary cannabis and CBD solutions.

2020 Plan

During the second quarter of fiscal 2020, we adopted a comprehensive strategic plan (the "2020 Plan") to more effectively execute our strategy of focusing our resources on more established, financially stable, and creditworthy customers (namely MSOs, LPs, and leading brands). In connection with the 2020 Plan, we began implementing a restructuring process designed to rationalize all aspects of our operations by, among other things, significantly reducing our overhead, implementing tighter expense controls, consolidating our warehouses, reducing our inventory, and drastically altering our sales strategy to focus more on these customers. We believe that this strategic shift and associated restructuring has resulted in a better forecast of demand, reduction of inventory and warehouse space, improved collections and cash flow, and potential revenue upside from these customers' continued expansion and consolidation in the marketplace. For additional information see Note 16 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for further discussion.

Update on COVID-19

On March 11, 2020, the World Health Organization ("WHO") recognized COVID-19 as a global pandemic, prompting many national, regional, and local governments, including in the markets that we operate in, to implement preventative or protective measures, such as travel and business restrictions, temporary store closures, and wide-sweeping quarantines and stay-at-home orders. As a result, COVID-19 has significantly curtailed global economic activity, including in the regulated cannabis and CBD industries in which we operate.

COVID-19 has materially impacted our markets and sources of revenues, including without limitation, by and through the following:

- State and provincial mandates requiring the temporary closure of nonessential businesses, such as the temporary closure of adult recreational use stores in Massachusetts, Nevada, and Ontario, Canada, as well as the substantial closure of many retail storefronts that sell CBD;
- Restrictions and limitations on travel that have curtailed consumer demand in tourist-heavy markets, such as Nevada and Colorado, as well as a general negative effect on the ability of our sales force to meet with potential customers and secure new orders; and
- Our customers increasingly consolidating orders and purchasing less frequently in response to general macroeconomic and business uncertainty, creating a more volatile and irregular purchasing and revenue recognition pattern.

In addition, we have been impacted by business and supply chain interruptions resulting from the COVID-19 pandemic, including as a result of our suppliers operating with a lighter-than-normal staff in their warehouses and periodically closing their warehouses to conduct deep cleaning services, which disrupts our normal business activities, including our ability to process and ship orders to customers in a timely manner. The COVID-19 pandemic has also resulted in increased air freight costs, which we must pass on to our customers via a surcharge, as well as general difficulties in securing space on incoming freight from our international vendors in order to make room for essential items. We have experienced, and could continue to experience, delays in orders from vendors, particularly in countries where the pandemic has had a significant impact, such as in China.

The COVID-19 pandemic has also created significant disruption and volatility in the capital markets, which, depending on future developments, could impact our capital resources and liquidity. If we need to raise additional capital to support our operations in the future, we may be unable to access the capital markets, and additional capital may only be available to us on terms that could be significantly detrimental to our existing stockholders and to our business. The COVID-19 pandemic is also affecting our customers access to the capital markets and their general spending patterns. As a result of all these factors, our management has significantly reduced non-essential costs.

In response to the health and safety risks and challenges presented by the COVID-19 pandemic, we have been proactively and regularly implementing measures to protect our employees. These measures include, but are not limited to, the following:

- abiding by national, state, and local recommendations to require the wearing of protective face masks and practicing of social distancing;
- arranging for regular cleaning services of our facilities;
- providing hand sanitizers and other disinfectants at workstations;
- adopting remote working protocols, systems, and processes for nonessential employees to work from home;
- conducting mandatory employee temperature checks, and on some occasions, requiring mandatory testing for employees;
- reconfiguring facilities to promote social distancing;
- operating with a smaller workforce in our warehouse and with staggered schedules;
- adopting a temporary essential pay program for essential warehouse employees; and

- developing and launching an education and training platform to help employees navigate the current workplace landscape and practice general sanitation.

While we are actively working to successfully navigate the financial, operational, and personnel challenges presented by the COVID-19 pandemic, the full extent of the impact of COVID-19 on our operational and financial performance will depend on future developments, including the duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent disease spread, all of which are uncertain, out of our control and cannot be predicted at this time.

Results of Operations

Operations Overview — Fiscal Years Ended August 31, 2020 and August 31, 2019

The following table presents our results of continuing operations:

	For the year ended August 31,			
(in thousands, except percentages)	2020		2019	
Net revenue	$ 113,837	100.0 %	$ 148,954	100.0 %
Cost of goods sold	106,265	93.3 %	124,386	83.5 %
Gross profit	7,572	6.7 %	24,568	16.5 %
Operating expenses:				
Selling, general and administrative	71,314	62.6 %	72,787	48.9 %
Gain on disposition of assets	—	— %	(1,254)	(0.8)%
Change in fair value of contingent consideration	—	— %	(1,780)	(1.2)%
Impairment loss on intangible asset	1,156	1.0 %	—	— %
Restructuring costs	8,358	7.3 %	—	— %
Total operating expenses	80,828	71.0 %	69,753	46.8 %
Loss from operations	(73,256)	(64.4)%	(45,185)	(30.3)%
Total other income (expenses), net	(4,429)	(3.9)%	5,676	3.8 %
Net loss before income taxes	(77,685)	(68.2)%	(39,509)	(26.5)%
Income tax benefit (expense)	29	— %	(127)	(0.1)%
Net loss	$ (77,656)	(68.2)%	$ (39,636)	(26.6)%

Comparison of Fiscal Years Ended August 31, 2020 and August 31, 2019

Revenue

	For the year ended August 31,			
(in thousands, except percentages)	**2020**	**2019**	**Variance**	**Percent Change**
Net revenue	$ 113,837	$ 148,954	$ (35,117)	(23.6)%

Total revenues decreased to $113.8 million for the fiscal year ended August 31, 2020 compared to $149.0 million for the fiscal year ended August 31, 2019, a decrease of $35.1 million or (23.6)%. The decrease was primarily attributed to the illicit market vape crisis, the adoption and implementation of our 2020 Plan, and restrictions due to the COVID-19 pandemic. The adverse state-specific regulatory actions taken in response to the illicit market vape crisis led customer purchasing patterns to recede, resulting in lower vape and natural products sales. Additionally, the adoption and implementation of our 2020 Plan to align with larger and more creditworthy MSOs, LPs and leading brands resulted in a reduction in credit risk with tighter credit terms for our smaller customers. While lower revenue was partially offset by higher shipping and tariff revenues and an increase in product sales from our larger and more creditworthy customers, the COVID-19 pandemic precipitated regulatory restrictions and shipping capacity constraints from China.

Cost of Goods Sold, Gross Profit and Gross Profit Percentage

(in thousands, except percentages)	For the year ended August 31, 2020	2019	Variance	Percent Change
Cost of goods sold	$ 106,265	$ 124,386	$ (18,121)	(14.6)%
Gross profit	7,572	24,568	(16,996)	(69.2)%
Gross profit percentage (gross profit as a percent of revenue)	6.7 %	16.5 %	(9.8)%	

Gross profit for the fiscal year ended August 31, 2020 was $7.6 million, or 6.7% of revenue, compared to $24.6 million, or 16.5% of revenue, for the fiscal year ended August 31, 2019. The decrease in gross profit is primarily attributable to $15.4 million in inventory write downs as a result of right sizing inventory levels and $4.7 million in purchase order cancellation charges, both to align with our 2020 Plan, and lower sales as a result of the illicit market vape crisis and COVID-19, which were partially offset by higher shipping and tariff revenues.

Operating Expense

(in thousands, except percentages)	For the year ended August 31, 2020	2019	Variance	Percent Change
Selling, general and administrative	$ 71,314	$ 72,787	$ (1,473)	(2.0)%
Gain on disposition of assets	$ —	$ (1,254)	$ 1,254	(100.0)%
Change in fair value of contingent consideration	$ —	$ (1,780)	$ 1,780	(100.0)%
Impairment loss on intangible asset	$ 1,156	$ —	$ 1,156	100.0 %
Restructuring costs	$ 8,358	$ —	$ 8,358	100.0 %

Our total operating expenses for the fiscal year ended August 31, 2020 increased to $80.8 million, or 71.0% of total revenue, compared to $69.8 million, or 46.8% of total revenue for the fiscal year ended August 31, 2019, an increase of $11.1 million or 15.9%. Selling, general and administrative ("SG&A") expenses was $71.3 million, or 62.6% of total revenue, for the fiscal year ended August 31, 2020 compared to $72.8 million, or 48.9% of total revenue, for the prior year, a decrease of $1.5 million. The decrease in SG&A expenses is due to lower compensation and benefits, facilities, professional fees, freight-out, and travel expenses related to the 2020 Plan and the COVID-19 pandemic. For the year ended August 31, 2020, operating expenses included a bad debt write-off of $9.7 million, and a restructuring expense of $8.4 million for severance and asset impairment charges associated with warehouse facility closures as part of the 2020 Plan. Additionally, we recorded a $1.2 million loss related to a trademark impairment. For the year ended August 31, 2019, operating expenses included a gain of $1.3 million and a gain of $1.8 million related to the disposition of assets and a change in the fair value of contingent consideration, respectively.

Other (Expense) Income, Net

(in thousands, except percentages)	For the year ended August 31, 2020	2019	Variance	Percent Change
Other (expense) income, net	$ (4,429)	$ 5,676	$ (10,105)	(178.0)%

Other income (expense), net for the fiscal year ended August 31, 2020 was expense of $4.4 million compared to income of $5.7 million for the fiscal year ended August 31, 2019. The increase in other expense is attributed to a $4.2 million decrease in gain from the change in fair value of a warrant liability and a $1.1 million increase in loss from the change in fair value of an equity investment. Additionally, interest expense increased $3.6 million due to an increase in our credit line capacity and a short-term note payable, which was issued in April 2019.

Income Tax (Expense) Benefit

(in thousands, except percentages)	For the year ended August 31, 2020	2019	Variance	Percent Change
Income Tax (Expense) Benefit	$ 29	$ (127)	$ 156	(122.8)%

Our income tax benefit for the fiscal year ended August 31, 2020 was $29 thousand compared to an income tax expense in the prior year of $0.1 million. We maintained a valuation allowance against our net deferred tax assets as of August 31, 2020 and 2019 excluding a portion relating to indefinite life intangibles. Our current year income tax benefit is attributable to deferred tax benefits from losses that were carried back against taxable income in prior periods. Our prior year income tax expense relates to the increase in our deferred tax liability for indefinite-life intangibles.

Net Loss

(in thousands, except percentages)	For the year ended August 31, 2020	2019	Variance	Percent Change
Net Loss	$ (77,656)	$ (39,636)	$ (38,020)	95.9 %

Our net loss for the fiscal year ended August 31, 2020 was $77.7 million compared to a net loss of $39.6 million for the fiscal year ended August 31, 2019. Basic and diluted loss per share for the fiscal year ended August 31, 2020 was $0.68. Basic and diluted loss per share for the fiscal year ended August 31, 2019 was $0.47 and $0.57, respectively.

Liquidity and Capital Resources

The table below summarizes selected liquidity data and metrics as of August 31, 2020 and 2019:

(in thousands, except percentages)	August 31, 2020	2019
Cash and cash equivalents	$ 10,476	$ 3,944
Accounts receivable, net	$ 9,427	$ 25,972
Total current assets	$ 57,006	$ 85,893
Total current liabilities	$ 36,357	$ 32,628
Working capital surplus	$ 20,649	$ 53,265

We believe that our liquidity sources, which includes available borrowing under our revolving credit facility, cash on hand, funds provided by operations, cost savings resulting from the adoption and implementation of the 2020 plan, and participation in available funding programs instituted by various state and federal governments in response to COVID-19 will be adequate to fund our expenditures and working capital requirements for the next 12 months.

Sources and Uses of Cash

(in thousands, except percentages)	August 31, 2020	2019
Cash provided by (used in):		
Operating activities	$ (19,707)	$ (70,242)
Investing activities	$ (5,048)	$ (8,017)
Financing activities	$ 31,287	$ 68,736

Net cash used in operating activities for the fiscal year ended August 31, 2020 was $19.7 million compared to $70.2 million for the fiscal year ended August 31, 2019. The $50.5 million decrease was attributable to a $38.0 million increase in net loss, offset by higher non-cash expenses such as inventory reserves, bad debt write-offs and asset impairments, and lower receivables and inventory associated with our 2020 Plan.

Net cash used in investing activities for the fiscal year ended August 31, 2020 was $5.0 million compared to $8.0 million for the fiscal year ended August 31, 2019. The change is primarily attributed to lower levels of equipment purchases, technology investments and leasehold improvements during the fiscal year.

Net cash provided by financing activities for the fiscal year ended August 31, 2020 was $31.3 million compared to $68.7 million for the fiscal year ended August 31, 2019. The decrease is primarily attributed to $1.8 million in proceeds from short-term notes, net of debt discount compared to the prior year's proceeds from Senior notes, net of debt discount of $16.4 million. In addition, we made $12.5 million in net repayments on our line of credit compared to $11.3 million in net proceeds in the prior year. Cash proceeds from the issuance of common stock slightly increased by $1.1 million to $42.1 million for the fiscal year ended August 31, 2020 compared to $41.0 million in the prior year.

We manage our liquidity and financial position in the context of our overall business strategy. We continually forecast and manage our cash, working capital balances, and capital structure to meet the short-term and long-term obligations of our business while seeking to maintain liquidity and financial flexibility. We have historically funded our operations primarily through the cash flows generated from our operations, borrowings available under our credit facility and from proceeds from the issuance of debt and equity.

We believe that cash generated from our operations, along with the funds available through debt or equity financings, primarily for the purposes of expanding current operations, making capital acquisitions, or consummating strategic transactions are adequate to fund our financial obligations for at least the next twelve months. Additional equity or debt financing may not be available when needed, on terms favorable to us or at all.

Short-Term Debt

Senior Note with HB Sub Fund

On April 29, 2019, we entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with HB Sub Fund, pursuant to which we agreed to issue and sell, and HB Sub Fund agreed to purchase, a senior note (the "Original Note") in a private placement offering in the aggregate principal amount of $21.3 million, with an original issue discount of $1.3 million, and received net proceeds of $20.0 million. The Original Note was a senior unsecured obligation, and unless earlier redeemed, was scheduled to mature on October 30, 2020. The Original Note did not bear interest, except upon the occurrence of an event of default.

On August 21, 2019, we entered into an exchange agreement (the "Exchange Agreement") with HB Sub Fund in order to amend and waive certain provisions of the Securities Purchase Agreement and the Original Note and exchange the Original Note for (i) a new senior note (the "First Amended Senior Note") for the same aggregate principal amount as the Original Note and (ii) a warrant to purchase up to 650,000 shares of our common stock at an exercise price of $4.25. The warrants have an expiration date of August 21, 2024 and have not been exercised. As of August 21, 2019, the Warrants were reclassified from a derivative liability to equity with a corresponding adjustment to additional paid-in capital. The fair value of the warrants was determined using a Black-Scholes model as of August 21, 2019 and was equal to $792 thousand. Similar to the terms of the Original Note, the First Amended Senior Note was scheduled to mature on October 30, 2020, at which time we would be required to pay HB Sub Fund an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the First Amended Senior Note did not bear interest except upon the occurrence of an event of default.

On November 8, 2019, we entered into a Second Exchange Agreement ("Second Exchange Agreement") with HB Sub Fund, pursuant to which we amended the First Amended Senior Note (the "Second Amended Senior Note"). Pursuant to the terms of the Second Amended Senior Note, the maturity date was extended to April 29, 2021, the aggregate principal amount of the Second Amended Senior Note was increased to approximately $24.0 million and the original issue discount was increased to $1.5 million. Upon maturity of the Second Amended Senior Note, we would be required to pay HB Sub Fund an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the Second Amended Senior Note did not bear interest except upon the occurrence of an event of default.

On June 9, 2020, we entered into a Third Exchange Agreement (the "Third Exchange Agreement") with HB Sub Fund in order to (x) amend and waive certain provisions of the Securities Purchase Agreement and the Second Amended Senior Note, and (y) exchange the Second Amended Senior Note without any cash consideration for (i) a new senior note in the aggregate principal amount of $22.0 million (the "Third Amended Senior Note") and (ii) 5,347,594 shares of our common stock (the "Third Exchange Shares"). The exchange of principal and Third Exchange Shares was accounted for as an extinguishment of debt, and a loss on extinguishment of $1.65 million was recorded in the statement of operations for the fiscal year ended August 31, 2020.

On November 10, 2020, the Company entered into a Fourth Exchange Agreement (the "Fourth Exchange Agreement") with HB Sub Fund in order to (x) amend and waive certain provisions of the Securities Purchase Agreement and the Third Amended Senior Note, and (y) exchange the Third Amended Senior Note without any cash consideration for (i) a new senior note in the aggregate principal amount of $19.0 million (the "Fourth Amended Senior Note") and (ii) 4,687,500 shares of our common stock (the "Fourth Exchange Shares").

Similar to the terms of the Third Amended Senior Note, the Fourth Amended Senior Note will mature on April 29, 2021, subject to HB Sub Fund's right to extend such maturity date. Upon maturity, we must pay HB Sub Fund an amount in cash representing the aggregate outstanding principal, plus any accrued and unpaid interest and accrued and unpaid late charges.

Similar to the terms of the Original Note, the Fourth Amended Senior Note will not bear interest except upon the occurrence (and during the continuance) of an Event of Default (as such term is defined in the Fourth Amended Senior Note), in which case the Fourth Amended Senior Note will bear interest at a rate of 18.0% per annum (the "Default Rate").

The Fourth Amended Senior Note is redeemable by us at any time after the issuance in an amount equal to the outstanding principal and any accrued interest or late charges. The Fourth Amended Senior Note contains customary affirmative and negative covenants, including a limitation on our ability to incur additional indebtedness, subject to certain permitted exceptions. The Fourth Amended Senior Note includes customary events of default including, among others, payment defaults, breach of covenant defaults, bankruptcy and insolvency defaults, cross defaults with certain indebtedness, a change of control default, judgment defaults, and inaccuracies of representations and warranties defaults. Similar to the terms of the Original Note, HB Sub Fund may require us to redeem, upon the occurrence of an Event of Default, all or a portion of the Fourth Amended Senior Note at a redemption premium of 135% of the outstanding principal and any accrued interest or late charges. Similar to the terms of the Original Note, any amount of principal or other amounts due to HB Sub Fund under the Securities Purchase Agreement or the Fourth Amended Senior Note that is not paid when due (except to the extent such amount is simultaneously accruing interest at the Default Rate) will result in a late charge being incurred and payable by us in an amount equal to interest on such amount at the rate of 18.0% per annum from the date such amount was due until the same is paid in full.

PPP Loan

On April 30, 2020, we qualified for and received a loan pursuant to the Paycheck Protection Program, a program implemented by the U.S. Small Business Administration under the Coronavirus Aid, Relief, and Economic Security Act from a qualified lender (the "PPP Lender"), for an aggregate principal amount of approximately $1.9 million (the "PPP Loan"). The PPP Loan bears interest at a fixed rate of 1.0% per annum, with the first six months of interest deferred, has a term of two years, and is unsecured and guaranteed by the U.S. Small Business Administration. The principal amount of the PPP Loan is subject to forgiveness under the Paycheck Protection Program upon our request to the extent that the PPP Loan proceeds are used to pay expenses permitted by the Paycheck Protection Program, including payroll costs, covered rent and mortgage obligations, and covered utility payments incurred by us. We have applied for forgiveness of the PPP Loan with respect to these covered expenses. To the extent that all or part of the PPP Loan is not forgiven, we will be required to pay interest on the PPP Loan at a rate of 1.0% per annum, and commencing in January 2021 principal and interest payments will be required through the maturity date in May 2022. The terms of the PPP Loan provide for customary events of default including, among other things, payment defaults, breach of representations and warranties, and insolvency events. The PPP Loan may be accelerated upon the occurrence of an event of default.

Long-Term Debt

Monroe Revolving Credit Facility

On August 21, 2019, the Company and its subsidiaries (collectively, the "Borrowers") entered into a secured asset based revolving credit facility (the "Monroe Revolving Credit Facility") with Monroe Capital Management Advisors, LLC, as collateral agent and administrative agent ("Monroe"), and the various lenders party thereto. The Company used a portion of the loan proceeds to pay in full all amounts due under its secured revolving credit facility with Gerber Finance Inc. The financing

agreement for the Monroe Revolving Credit Facility (the "Monroe Financing Agreement") provides for a total borrowing commitment of $35.0 million to be made in the form of revolving loans, subject to a borrowing base, together with the ability by the Company, upon the satisfaction of certain conditions set forth in the Monroe Financing Agreement, to increase the size of such commitment to $50 million. The Monroe Revolving Credit Facility also includes an accordion feature that permits the Borrowers to increase the available revolving commitments under the Monroe Revolving Credit Facility by up to an additional $15 million, subject to satisfaction of certain conditions.

All amounts advanced under the Monroe Revolving Credit Facility will bear interest at a rate per annum equal to either:

- 5.25% plus the greatest of: (a) 5.50%; (b) the Federal Funds Rate plus 0.50%; (c) the quotient of (i) the LIBOR rate, divided by (ii) the difference of 100 percent minus, for any lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System of the United States (or its successor) for determining reserve requirements of that lender; plus 1.00%; and (d) the Prime Rate; or
- 8.50% plus the greater of (a) the quotient of (i) the LIBOR rate, divided by (ii) the difference of one minus the stated maximum reserve percentage to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities; and (b) 1.00%.

As of August 31, 2020, the interest rate was 8.5%. The Monroe Revolving Credit Facility has a five-year term, maturing on August 21, 2024, and is secured by a first priority lien on substantially all of the assets of the Company and its subsidiaries.

The Monroe Revolving Credit Facility also contains customary representations and warranties, affirmative and negative covenants, including a financial covenant requiring certain minimum availability, and events of default. As of August 31, 2020, there was no balance outstanding under the facility. As of August 31, 2019, the outstanding balance under the facility was $12.3 million.

The Company incurred closing costs associated with the Monroe Revolving Credit Facility in the amount of $2.7 million, which were deferred and amortized over the 5-year term of the Monroe Revolving Credit Facility on a straight-line basis. As of August 31, 2020, unamortized deferred closing costs of $2.1 million is included in Other assets. Interest expense and amortization of debt discount, associated with the Monroe Revolving Credit Facility during the year ended August 31, 2020 amounted to $565 thousand and $614 thousand, respectively.

Monroe Warrants

Also on August 21, 2019, in connection with, and as a condition to the consummation of, the Monroe Revolving Credit Facility, we entered into a subscription agreement (the "Subscription Agreement") with certain entities affiliated with Monroe (collectively, the "Subscribers"), pursuant to which we issued to the Subscribers warrants (the "Monroe Warrants") to purchase up to an aggregate of 500,000 shares of our common stock, at an exercise price of $4.25, being the arithmetic average of the closing price of our common stock for the 10 consecutive trading days prior to the date of issuance (subject to customary adjustment upon subdivision or combination of our common stock). The Monroe Warrants are immediately exercisable and may be exercised at any time, and from time to time, on or before the fifth anniversary of the date of issuance. The Monroe Warrants include a "blocker" provision that, subject to certain exceptions described in the Monroe Warrants, prevents the Subscribers from exercising the Monroe Warrants to the extent such exercise would result in a Subscriber together with certain affiliates owning in excess of 4.99% of our common stock outstanding immediately after giving effect to such exercise.

The Monroe Warrants were classified as equity. The estimated fair value of the Monroe Warrants was $989 thousand as of August 21, 2019 and was computed using the Black-Scholes model.

Off-Balance Sheet Transactions

We do not currently have, and did not have during the periods presented, any off-balance sheet arrangements, as defined under SEC rules.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we

evaluate our estimates, including those related to revenue recognition, accounts receivable reserves, inventory and related reserves, valuations and purchase price allocations related to business combinations, expected cash flows used to evaluate the recoverability of long-lived assets, estimated fair values of long-lived assets used to record impairment charges related to intangible assets and goodwill, amortization periods, accrued expenses, stock-based compensation, contingent liabilities, and recoverability of our net deferred tax assets and any related valuation allowance. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

Inventory

Our inventories consist of finished goods and are stated at the lower of cost or net realizable value using the average cost method. As a designer and distributor of manufactured products for the legal cannabis industry, we may be exposed to a number of economic and industry factors that could result in portions of our inventory becoming either obsolete or in excess of anticipated usage. These factors include, but are not limited to, our ability to meet changing customer requirements, competitive pressures on products and prices, reliability and replacement of and the availability of products from our suppliers. Our policy is to establish inventory reserves when conditions exist that suggest that our inventory may be in excess of anticipated demand or is obsolete based upon our assumptions about future demand for our products and market conditions. We regularly evaluate our ability to realize the value of our inventory based on a combination of factors including the following: forecasted sales or usage, product end of life dates, estimated current and future market values and new product introductions. Assumptions used in determining our estimates of future product demand may prove to be incorrect, in which case the provision required for excess and obsolete inventory would have to be adjusted in the future. If inventory is determined to be overvalued, we would be required to recognize such costs as cost of goods sold at the time of such determination. Although every effort is made to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand could have a significant negative impact on the value of our inventory and our reported operating results. Additionally, purchasing requirements and alternative usage avenues are explored within these processes to mitigate inventory exposure. When recorded, our reserves are intended to reduce the carrying value of our inventory to its net realizable value.

Accounts Receivable Reserves

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We regularly evaluate the collectability of our trade receivables based on a combination of factors, which may include dialogue with the customer to determine the cause of non-payment, the use of collection agencies and outside counsel, and/or the use of litigation. In the event it is determined that the customer may not be able to meet its full obligation to us, we record a specific allowance to reduce the related receivable to the amount that we expect to recover given all information present. We perform ongoing evaluations of our customers and adjust credit limits based upon payment history and our assessment of the customer's current credit worthiness. We continuously monitor collections from our customers and maintain a provision for estimated credit losses based upon our historical experience and any specific customer collection issues that we have identified. While such credit losses have historically been within our expectations and the provisions established, we cannot guarantee that we will continue to experience the same credit loss rates in the future. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

The sales of products generally do not include a right of return and historically, we have not experienced any significant sales returns. These estimates are based on the historical facts and circumstances regarding sales orders, analysis of credit memo data and other known factors. If the data we use to calculate these estimates do not properly reflect reserve requirements, then a change in the allowances would be made in the period in which such a determination is made and revenues in that period could be adversely affected.

Valuation of Business Combinations

We record tangible and intangible assets acquired and liabilities assumed in recent business combinations under the acquisition method of accounting. Amounts paid for each acquisition are allocated to the assets acquired and liabilities assumed based on their fair values at the dates of acquisition. We then allocate the purchase price in excess of net tangible assets acquired to identifiable intangible assets based on detailed valuations that use information and assumptions provided by management. We

also utilize third-party consultants to assist us in estimating the fair value of assets and liabilities. We allocate any excess purchase price over the fair value of the net tangible and intangible assets acquired and liabilities assumed to goodwill.

We use the income approach, the relief from royalty method (a combination of the income and market methods), and the with and without method to determine the fair values of our identifiable intangible assets and goodwill. The use of these various approaches determines fair value by estimating cash flows attributable to domain names, trademarks and non-competition agreements. We base our revenue assumptions on estimates of relevant market sizes, expected market growth rates, expected trends in product introductions by competitors. We base the discount rate used to arrive at a present value as of the date of acquisition on the time value of money and cannabis industry investment risk factors. For the intangible assets we acquired in connection with prior acquisitions, we used risk-adjusted discount rates to discount our projected cash flows, ranging from 19% to 26%. We believe that amounts so determined represent the fair value at the date of acquisition and do not exceed the amount a third party would pay. Domain names represent established relationships with customers, which provides a ready channel for the sale of additional products and services. Trade names represent acquired product names that we intend to continue to utilize.

Contingent Consideration

We estimate and record the acquisition date fair value of contingent consideration as part of purchase price consideration for acquisitions. Additionally, each reporting period, we estimate changes in the fair value of contingent consideration and recognize any change in fair in our consolidated statement of operations. Our estimate of the fair value of contingent consideration requires highly subjective assumptions to be made of future operating results, discount rates and probabilities assigned to various potential operating result scenarios. Future revisions to these assumptions could materially change our estimate of the fair value of contingent consideration and, therefore, materially affect the Company’s future financial results. A portion of the contingent consideration liability is to be settled with the issuance of shares of common stock once contingent provisions set forth in respective acquisition agreements have been achieved. Upon achievement of contingent provisions, respective liabilities are relieved and offset by increases to common stock and additional paid in capital in the stockholders’ equity section of our consolidated balance sheets.

Goodwill and Intangible Assets

Goodwill and intangible assets that have indefinite useful lives are not amortized but are evaluated for impairment annually or whenever events or changes in circumstances indicate that the carrying value may not be recoverable. We record intangible assets at historical cost. We amortize our intangible assets that have finite lives using the straight-line method. Amortization is recorded over the estimated useful lives ranging from four to six years.

The Company evaluates intangible assets and long-lived assets for possible impairment periodically and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. This includes but is not limited to significant adverse changes in business climate, market conditions, or other events that indicate an asset's carrying amount may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate. If the undiscounted cash flows used in the test for recoverability are less than the carrying amount of these assets, the carrying amount of such assets is reduced to fair value. The Company evaluates and tests the recoverability of its goodwill for impairment at least annually during its fourth quarter of each fiscal year or more often if and when circumstances indicate that it is more likely than not goodwill may be impaired.

In January 2017, the FASB issued amended guidance that simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. 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 and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. The new standard is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2019, and early adoption is permitted on goodwill impairment tests performed on testing dates after January 1, 2017. We adopted the standard beginning with our fiscal 2017 impairment tests.

In fiscal 2020, we conducted a qualitative assessment of the goodwill during the fourth quarter of fiscal 2020 and concluded that it was more likely than not that the fair value of the reporting unit exceeded its carrying amount. Upon completion of the annual impairment assessment, the Company determined that no goodwill impairment was indicated.

The annual impairment testing process is subjective and requires judgment at many points throughout the analysis. If these estimates or their related assumptions change in the future, we may be required to record impairment charges for these assets not previously recorded. Any loss resulting from an impairment test would be reflected in operating income in our consolidated statements of operations.

Valuation of Long-Lived Assets, Including Finite-Lived Intangibles.

In accordance with FASB ASC Topic 360, *Property, Plant, and Equipment*, we perform an impairment test for finite-lived intangible assets and other long-lived assets, such as property and equipment, whenever events or changes in circumstances indicate that we may not recover the carrying value of such assets.

Revenue Recognition

We adopted ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), using the modified retrospective method. As a practical expedient allowed under ASC 606, we applied the new guidance only to contracts that were not completed as of the date of initial application. We did not record any cumulative effect adjustment to retained earnings as of September 1, 2019 and did not record any material adjustment to gross revenue for the fiscal year ended August 31, 2019 as a result of applying the guidance in ASC 606.

Revenue is recognized when control of promised goods or services is transferred to the customer, or when any performance obligations are satisfied under contract. The amount of revenue recognized reflects the consideration the Company expects to be entitled to in exchange for respective goods or services provided.

The Company applies the following steps to recognize revenue for the sale of products that reflects the consideration to which the Company expects to be entitled to receive in exchange for the promised goods:

- Identify the contract with a customer
- Identify the performance obligations in the contract
- Determine the transaction price
- Allocate the transaction price to the performance obligations in the contract
- Recognize revenue when the Company satisfies a performance obligation

Please see Note 1 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for a more detailed description of our revenue recognition policy.

Business Combinations

We include the results of operations of the businesses that we acquire as of the respective dates of acquisition. We allocate the fair value of the purchase price of our business acquisitions to the tangible assets acquired, liabilities assumed, and intangible assets acquired, based on their estimated fair values. The excess of the purchase price over the fair values of these identifiable assets and liabilities is recorded as goodwill. Additional information existing as of the acquisition date, but unknown to us at that time, may become known during the remainder of the measurement period, not to exceed 12 months from the acquisition date, which may result in changes to the amounts and allocations recorded.

Stock-Based Compensation

We account for stock-based awards in accordance with ASC Topic 718, *Compensation* ("ASC 718"), which requires fair value measurement and recognition of compensation expense for all share-based payment awards made to employees and directors, including restricted stock awards. We estimate the fair value of stock options using the Black-Scholes option pricing model and for restricted stock using the stock price on the date of the approval of the award. The fair value is then expensed over the requisite service periods of the awards, which is generally the vesting period and the related amount is recognized in the consolidated statements of operations.

On September 1, 2019, the Company adopted Accounting Standards Update 2018-7 which addresses several aspects of the accounting for non-employee share-based payment transactions and expands the scope of ASC 718, *Compensation*, to include share-based payment transactions for acquiring goods and services from non-employees. Under the simplified standard, non-employee options will be valued once at the date of grant. At adoption, all awards without established measurement dates were revalued one final time and did not have a material impact on the condensed consolidated financial statements.

Income Taxes

The Company accounts for income taxes under FASB ASC Topic 740, *Accounting for Income Taxes*. As part of the process of preparing the consolidated financial statements, the Company is required to estimate an income tax provision (benefit) in each of the jurisdictions in which it operates. This process involves estimating the current income tax provision (benefit) together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets.

The Company recorded a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. While future taxable income and ongoing prudent and feasible tax planning strategies have been considered in assessing the need for the valuation allowance, in the event the Company determines it would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to the valuation allowance for the deferred tax asset would increase income in the period such determination was made. Likewise, should the Company determine it would not be able to realize all or part of the net deferred tax asset in the future, an adjustment to the valuation allowance for the deferred tax asset would be charged to income in the period such determination was made.

During fiscal 2020, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely that not will be realized. The net deferred tax liability for fiscal year 2020 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets.

Recent Accounting Pronouncements

See Note 1 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for further discussion.

Inflation

We do not believe that inflation has had a material effect on our results of operations in recent years. We cannot assure you that inflation will not adversely affect our business in the future.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We do not use derivative financial instruments in our investment portfolio and have no foreign exchange contracts. Our financial instruments consist of cash and cash equivalents. We consider investments that, when purchased, have a remaining maturity of ninety (90) days or less to be cash equivalents. We do not believe that a notional or hypothetical 10% change in interest rate percentages would have a material impact on the fair value of our investment portfolio or our interest income.

Item 8. Financial Statements and Supplementary Data

The information required by this item is included under Item 15 of Part IV below.

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

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer (who is also the Company’s chairman, secretary and principal executive officer), and our chief financial officer (who is also the Company’s principal financial and accounting officer) to allow for timely decisions regarding required disclosure. Thus, in accordance with Rules 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, of the effectiveness of our disclosure controls and procedures as of August 31, 2020, which is the end of the period covered by this Annual Report on Form 10-K. Based on the evaluation of these disclosure controls and procedures, and in light of the material weaknesses found in our internal controls over financial

reporting, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were not effective. The ineffectiveness of our disclosure controls and procedures was due to material weaknesses identified in our internal control over financial reporting described below.

Management Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over the Company's financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002, our management, with the participation of our principal executive officer and principal financial and accounting officer have conducted an assessment, including testing, using the criteria in Internal Control – Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") (2013). Our system of internal control over financial reporting is 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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. This assessment included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on this evaluation, management concluded that our internal control over financial reporting was not effective as of August 31, 2020.

Remediation of Material Weaknesses in Internal Control Over Financial Reporting

We identified certain material weaknesses in connection with the Restatement, including material weaknesses relating to (1) the accounting, presentation and disclosure of share-settled contingent consideration, (2) inadequate segregation of duties consistent with control objectives, and (3) a lack of multiple levels of supervision and review.We have taken significant steps to enhance our internal control over financial reporting and plan to take additional steps to remediate these material weaknesses.

Specifically:

- We appointed additional independent members with public company board experience to our board of directors, such that our board of directors is now composed of a majority of independent directors;
- On March 9, 2018, our board of directors formed an Audit Committee composed entirely of independent directors that, among other things, assists the board of directors in its oversight of the integrity of our financial statements and our financing reporting processes and systems of internal control;
- We added staff to our finance team, and engaged a third party to assist with the assessment of certain complex transactions under US GAAP;
- In January 2018, we hired a controller with public company experience;
- We have adopted a Code of Business Conduct and Ethics and a whistleblower policy; and
- We have engaged a national accounting advisory firm to assist with the design and implementation of our internal control over financial reporting based on the criteria established in Internal Control – Integrated Framework (2013) issued by COSO.

Our management will continue to monitor and evaluate the effectiveness of our internal controls and procedures and our internal controls over financial reporting on an ongoing basis and is committed to taking further action and implementing additional enhancements or improvements.

Because of its inherent limitations, internal controls over financial reporting may not prevent or detect misstatements. 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. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

This Annual Report on Form 10-K does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the SEC that permit the Company to provide only management's report in this annual report.

The remediation efforts set out herein will continue to be implemented during our 2021 fiscal year. We believe that the controls that we will be implementing will improve the effectiveness of our internal control over financial reporting. As we continue to evaluate and work to improve our internal control over financial reporting, we may determine to take additional measures to address the material weakness or determine to supplement or modify certain of the remediation measures described above.

Changes in Internal Control Over Financial Reporting

Except as described above, there were no significant changes in our internal control over financial reporting during the fiscal quarter ended August 31, 2020 that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

Item 9B. Other Information.

On November 10, 2020, the Company entered into a Fourth Exchange Agreement (the "Fourth Exchange Agreement") with HB Sub Fund in order to (x) amend and waive certain provisions of the Securities Purchase Agreement and the Third Amended Senior Note, and (y) exchange the Third Amended Senior Note without any cash consideration for (i) a new senior note in the aggregate principal amount of $19.0 million (the "Fourth Amended Senior Note") and (ii) 4,687,500 shares of our common stock (the "Fourth Exchange Shares").

Similar to the terms of the Third Amended Senior Note, the Fourth Amended Senior Note will mature on April 29, 2021, subject to HB Sub Fund's right to extend such maturity date. Upon maturity, we must pay HB Sub Fund an amount in cash representing the aggregate outstanding principal, plus any accrued and unpaid interest and accrued and unpaid late charges.

Similar to the terms of the Original Note, the Fourth Amended Senior Note will not bear interest except upon the occurrence (and during the continuance) of an Event of Default (as such term is defined in the Fourth Amended Senior Note), in which case the Fourth Amended Senior Note will bear interest at a rate of 18.0% per annum (the "Default Rate").

The Fourth Amended Senior Note is redeemable by us at any time after the issuance in an amount equal to the outstanding principal and any accrued interest or late charges. The Fourth Amended Senior Note contains customary affirmative and negative covenants, including a limitation on our ability to incur additional indebtedness, subject to certain permitted exceptions. The Fourth Amended Senior Note includes customary events of default including, among others, payment defaults, breach of covenant defaults, bankruptcy and insolvency defaults, cross defaults with certain indebtedness, a change of control default, judgment defaults, and inaccuracies of representations and warranties defaults. Similar to the terms of the Original Note, HB Sub Fund may require us to redeem, upon the occurrence of an Event of Default, all or a portion of the Fourth Amended Senior Note at a redemption premium of 135% of the outstanding principal and any accrued interest or late charges. Similar to the terms of the Original Note, any amount of principal or other amounts due to HB Sub Fund under the Securities Purchase Agreement or the Fourth Amended Senior Note that is not paid when due (except to the extent such amount is simultaneously accruing interest at the Default Rate) will result in a late charge being incurred and payable by us in an amount equal to interest on such amount at the rate of 18.0% per annum from the date such amount was due until the same is paid in full.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required by this item will be contained in our Definitive Proxy Statement for our 2021 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2020. Such information is incorporated herein by reference.

Item 11. Executive Compensation.

Information required by this item will be contained in our Definitive Proxy Statement for our 2021 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2020. Such information is incorporated herein by reference.

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

Information required by this item will be contained in our Definitive Proxy Statement for our 2021 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2020. Such information is incorporated herein by reference.

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

Information required by this item will be contained in our Definitive Proxy Statement for our 2021 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2020. Such information is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services.

Information required by this item will be contained in our Definitive Proxy Statement for our 2021 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2020. Such information is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) Financial Statements and Schedules:

(1) Financial Statements. The Consolidated Financial Statements of KushCo Holdings, Inc., and its subsidiaries filed under this Item 15:

(2) Financial Statement Schedules: None. Financial statement schedules have been omitted since the required information is included in our Consolidated Financial Statements contained in this Annual Item 15.

(3) Exhibits. The exhibits listed in the accompanying Exhibit Index are incorporated herein by reference.

(b) Exhibits: The exhibits listed in the accompanying Exhibit Index are filed as a part of this Annual Report on Form 10-K.

(c) Separate Financial Statements and Schedules: None

KUSHCO HOLDINGS, INC.

Consolidated Financial Statements

August 31, 2020 and 2019

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
KushCo Holdings, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of KushCo Holdings, Inc. (the "Company") as of August 31, 2020 and 2019, the related consolidated statements of operations, stockholders' equity and cash flows for each of the two years in the period ended August 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of August 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended August 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

Explanatory Paragraph – Change in Accounting Principles

As discussed in Note 9 to the financial statements, the Company changed its method of accounting for leases during the year ended August 31, 2020 due to the adoption of ASU No. 2016-02, Leases (Topic 842), as amended, effective September 1, 2019, using the modified retrospective approach.

Basis for Opinion

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

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

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

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2019.

Costa Mesa, California
November 10, 2020

KUSHCO HOLDINGS, INC.
Consolidated Balance Sheets
(Amounts in thousands)

	August 31, 2020	August 31, 2019
ASSETS		
Current assets:		
Cash	$ 10,476	$ 3,944
Accounts receivable, net	9,427	25,972
Inventory, net	28,049	43,768
Prepaid expenses and other current assets	9,054	12,209
Total current assets	57,006	85,893
Goodwill	52,267	52,267
Intangible assets, net	1,000	3,103
Property and equipment, net	8,801	11,054
Other assets	8,582	6,917
Total Assets	**$ 127,656**	**$ 159,234**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 4,282	$ 10,907
Accrued expenses and other current liabilities	11,383	9,460
Current portion of notes payable	20,692	—
Line of credit	—	12,261
Total current liabilities	36,357	32,628
Long-term liabilities:		
Notes payable	—	18,975
Warrant liability	365	5,444
Other non-current liabilities	4,205	833
Total long-term liabilities	4,570	25,252
Total liabilities	40,927	57,880
Commitments and contingencies (Note 15)	—	—
Stockholders' equity		
Preferred stock, $0.001 par value, 10,000 shares authorized, no shares issued and outstanding	—	—
Common stock, $0.001 par value, 265,000 shares authorized, 125,708 and 90,041 shares issued and outstanding, respectively	126	90
Additional paid-in capital	227,253	164,258
Accumulated deficit	(140,650)	(62,994)
Total stockholders' equity	86,729	101,354
Total liabilities and stockholders' equity	**$ 127,656**	**$ 159,234**

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Operations
(Amounts in thousands, except per share amounts)

	For the year ended August 31,	
	2020	**2019**
Net revenue	$ 113,837	$ 148,954
Cost of goods sold	106,265	124,386
Gross profit	7,572	24,568
Operating expenses:		
Selling, general and administrative	71,314	72,787
Gain on disposition of assets	—	(1,254)
Change in fair value of contingent consideration	—	(1,780)
Impairment loss on intangible asset	1,156	—
Restructuring costs	8,358	—
Total operating expenses	80,828	69,753
Loss from operations	(73,256)	(45,185)
Other income (expense):		
Change in fair value of warrant liability	5,079	9,294
Change in fair value of equity investment	(2,018)	(931)
Interest expense	(6,076)	(2,523)
Loss on extinguishment of debt	(1,651)	—
Other expense, net	237	(164)
Total other (expense) income	(4,429)	5,676
Loss before income taxes	(77,685)	(39,509)
Income tax benefit (expense)	29	(127)
Net loss	$ (77,656)	$ (39,636)
Net loss per share		
Basic	$ (0.68)	$ (0.47)
Diluted	$ (0.68)	$ (0.57)
Weighted-average common shares outstanding		
Basic	114,085	84,880
Diluted	114,085	84,896

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Stockholders' Equity
(Amounts in thousands)

	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Stockholders' Equity
	Shares Issued	Amount			
Balances at August 31, 2018	**78,273**	**$ 78**	**$ 104,918**	**$ (23,358)**	**$ 81,638**
Stock-based compensation	882	1	11,997	—	11,998
Stock sold to investors, net of offering costs	9,077	9	41,583	—	41,592
Stock issued for acquisitions	1,809	2	3,566	—	3,568
Issuance of warrants	—	—	2,194	—	2,194
Net loss	—	—	—	(39,636)	(39,636)
Balances at August 31, 2019	**90,041**	**$ 90**	**$ 164,258**	**$ (62,994)**	**$ 101,354**
Stock-based compensation	1,356	2	12,441	—	12,443
Stock sold to investors, net of offering costs	27,198	27	42,068	—	42,095
Stock issued for acquisitions	23	—	—	—	—
Stock issued for equity investment	1,653	2	2,526	—	2,528
Stock issued for amendment of debt agreement	5,437	5	5,960	—	5,965
Net loss	—	—	—	(77,656)	(77,656)
Balances at August 31, 2020	**125,708**	**$ 126**	**$ 227,253**	**$ (140,650)**	**$ 86,729**

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Cash Flows
(Amounts in thousands)

	For the Year Ended August 31,	
	2020	**2019**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (77,656)	$ (39,636)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	4,217	2,501
Amortization of debt discount	5,340	1,243
Provision for bad debt	9,737	2,628
Provision for sales returns	(145)	477
Provision for inventory reserve	15,354	3,026
Impairment loss on intangible asset	1,156	—
Gain on disposal of assets	37	(1,254)
Purchase order cancellation charges	4,694	—
Gain on termination of leases	(798)	—
Impairment loss on right-of-use and fixed assets	6,895	—
Change in fair value of equity investment	2,018	931
Stock-based compensation	14,008	13,384
Change in fair value of warrant liability	(5,079)	(9,294)
Loss on extinguishment of debt	1,651	—
Provision for deferred taxes	47	97
Change in fair value of contingent consideration	—	(1,780)
Right-of-use assets amortization	1,207	—
Changes in operating assets and liabilities:		
Accounts receivable	9,018	(20,475)
Inventory	365	(35,095)
Prepaid expenses and other current assets	(1,456)	120
Other non-current assets	(423)	(535)
Accounts payable	(8,803)	7,874
Accrued expenses and other current liabilities	89	4,916
Other non-current liabilities	(1,180)	630
Net cash used in operating activities	(19,707)	(70,242)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, equipment, and intangibles	(5,048)	(8,017)
Net cash used in investing activities	(5,048)	(8,017)
CASH FLOWS FROM FINANCING ACTIVITIES		
Repayment of finance leases	(106)	(106)
Proceeds from notes payable, net of debt discount	1,757	16,413
Proceeds from stock option exercises	—	79
Proceeds from issuance of common stock, net of offering costs	42,095	41,008
Proceeds from line of credit	98,928	140,609
Repayments on line of credit	(111,387)	(129,267)
Net cash provided by financing activities	31,287	68,736
NET INCREASE (DECREASE) IN CASH	6,532	(9,523)
CASH AT BEGINNING OF YEAR	3,944	13,467
CASH AT END OF YEAR	$ 10,476	$ 3,944
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
CASH PAID FOR:		
Interest	$ 680	$ 1,149
Income taxes	$ —	$ 13
Amounts included in the measurement of operating lease liabilities	$ 1,740	$ —

NON-CASH INVESTING AND FINANCING ACTIVITIES		
Capital leases	$ —	$ 240
Services prepaid for in common stock	$ 846	$ 1,987
Unpaid amounts for purchase of property & equipment	$ 9	$ 211
Fair value of shares issued related to acquisition of business	$ —	$ 3,568
Shares issued in exchange for equity investment in Xtraction Services	$ 2,528	$ —
Stock issued for amendment of debt agreement	$ 5,965	$ —
Fair value of shares received from sale of assets	$ —	$ 1,791
Warrants issued with financing agreement	$ —	$ 2,194
Operating lease liability (ASC 842 adoption)	$ 7,600	$ —
Right of use assets (ASC 842 adoption)	$ 6,700	$ —

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

KUSHCO HOLDINGS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except per share data)

NOTE 1 – NATURE OF BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) markets and sells a wide variety of ancillary products and services to customers operating in the regulated medical and adult recreational cannabis and hemp-derived CBD industries.

Our products primarily consist of bottles, jars, bags, tubes, containers, vape cartridges, vape batteries and accessories, labels and processing supplies, solvents, natural products, stainless steel tanks, and custom branded anti-counterfeit and authentication labels. Our services primarily consist of retail services and hemp trading services, which focus on facilitating compliant hemp transactions for in-network, pre-qualified farmers and a pre-qualified buyer network. Our retail services division focuses on building distribution networks of compliant hemp-derived CBD brands across conventional and other retail channels, including convenience, pet care, and beauty channels.

The Company's wholly-owned subsidiary Kim International Corporation ("KIM"), a California corporation, was originally incorporated as Hy Gro Economics Corporation ("Hy Gro") on December 2, 2010. On October 30, 2012, Hy Gro amended its articles of incorporation to reflect a name change to KIM International Corporation. On March 4, 2014, the shareholders of KIM exchanged all 10,000 of their common shares for 32,400 common shares of KushCo Holdings, Inc. The operations of KIM became the operations of KushCo after the share exchange and accordingly the transaction is accounted for as a recapitalization of KIM whereby the historical financial statements of KIM are presented as the historical financial statements of the combined entity. KIM was the acquiring entity in accordance with ASC 805, *Business Combinations*. The accumulated losses of KIM were carried forward after the completion of the share exchange. Operations prior to the share exchange were those of KIM.

On August 29, 2018, KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) filed Amended and Restated Articles of Incorporation (the "Amended and Restated Charter") with the Secretary of State for the State of Nevada. The Amended and Restated Charter changed the Company's name from Kush Bottles, Inc. to KushCo Holdings, Inc. The Amended and Restated Charter became effective on September 1, 2018 and was approved by the Company's stockholders at the Company's 2018 Annual Meeting of Stockholders on May 8, 2018.

In June 2019, the Company moved its corporate headquarters from Garden Grove, California to Cypress, California. The address for the Company's new corporate headquarters is 6261 Katella Avenue, Suite 250, Cypress, CA 90630.

Acquisition of CMP Wellness, LLC

On May 1, 2017, the Company entered into a merger agreement with Lancer West Enterprises, Inc. a California corporation, Walnut Ventures, a California corporation, Jason Manasse, an individual, and Theodore Nicols, an individual, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in the Company's indirect acquisition of CMP Wellness, LLC, a California limited liability company, which prior to the merger, was owned 100% by Lancer West Enterprises, Inc. and Walnut Ventures. CMP Wellness, LLC is a distributor of vaporizers, cartridges and accessories. CMP Wellness was dissolved in October 2019.

Acquisition of Summit Innovations, LLC

On May 2, 2018, the Company completed its acquisition of Summit Innovations, LLC ("Summit"), a leading distributor of solvents to the legal cannabis industry. Pursuant to the terms of the Agreement and Plan of Merger (the "Merger Agreement"), Summit merged with and into KCH Energy, LLC ("KCH"), a wholly-owned subsidiary of the Company, with KCH as the surviving entity.

Registered Offerings

On June 7, 2018, January 15, 2019, September 26, 2019, and February 6, 2020, the Company entered into securities purchase agreements with certain accredited investors in connection with its registered direct offerings. See Notes 11 and 13 for further description of these transactions.

Acquisition of Hybrid Creative, LLC

On July 11, 2018, the Company completed its acquisition of Hybrid Creative, LLC ("Hybrid"), a specialist design agency. Pursuant to the terms of the Membership Interest Purchase Agreement (Agreement") with the members of Zach Darling Creative Associates, LLC ("ZDCA"), parent of wholly-owned subsidiary, Hybrid, the Company purchased the entire issued member interest of ZDCA. Following the acquisition, ZDCA operates as a wholly-owned subsidiary of the Company, with Hybrid continuing to operate as wholly-owned subsidiary of ZDCA.

Consolidation of an Entity

In July 2018, the Company invested $1.0 million in the form of a convertible promissory note in a third-party company. The convertible promissory note provides the Company with the option to convert the principal balance of the note, at any time prior to the maturity date, into equity of this entity, representing 100% of the equity interests. As primary beneficiary, the Company consolidated this entity. The third-party company was dissolved in December 2019.

Basis of Presentation

The accompanying consolidated financial statements and related notes include the activity of the Company and its wholly-owned subsidiaries, have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). Certain prior year amounts have been reclassified for consistency with the current period presentation. These reclassifications had no effect on previously reported results of operations or accumulated deficit. Significant inter-company transactions and balances have been eliminated in consolidation.

The Company's principal sources of liquidity at August, 31 2020 consisted of cash on hand, line of credit and future cash anticipated to be generated from operations. The Company generated positive cash flows from operations during the quarter ending August 31, 2020, and reported positive working capital as of August 31, 2020. However, the Company's principal loan balances mature on April 28, 2020. The Company intends to refinance such loan balances by their stated maturity. The Company believes its current cash balances coupled with anticipated cash flow from operating activities, and its plans to refinance its borrowings will be sufficient to meet its working capital requirements for at least one year from the date the consolidated financial statements were available to be issued.

References to amounts in these notes to consolidated financial statements are in thousands, except per share data, unless otherwise specified.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amount of revenues and expenses during the reporting period.

Significant estimates relied upon in preparing these consolidated financial statements include revenue recognition, accounts receivable reserves, inventory and related reserves, valuations and purchase price allocations related to business combinations, expected future cash flows used to evaluate the recoverability of long-lived assets, estimated fair values of long-lived assets used to record impairment charges related to intangible assets and goodwill, amortization periods, accrued expenses, stock-based compensation, and recoverability of the Company's net deferred tax assets and any related valuation allowance.

Although the Company regularly assesses these estimates, actual results could differ materially from these estimates. Changes in estimates are recorded in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions that it believes to be reasonable under the circumstances. Actual results may differ from management's estimates if past experience or other assumptions do not turn out to be substantially accurate.

The Company is subject to a number of risks similar to those of other companies of similar size and with a focus on serving the cannabis and CBD industries, including, the development stage of certain products, competition, a limited number of suppliers,

integration of acquisitions, substantial indebtedness, disruptions in the U.S. and global economy and financial markets, including as a result of COVID-19, government regulations, protection of proprietary rights, and dependence on key individuals.

Cash and Cash Equivalents

The Company considers cash and cash equivalents to consist of cash on hand and investments having an original maturity of 90 days or less that are readily convertible into cash. The Company deploys its cash and cash equivalents with financial institutions with highly rated credit and monitors the amount on deposit at the financial institution. The Company has cash deposits held at certain institutions at August 31, 2020 of which $8,262 was in excess of Federal Deposit Insurance Corporation insured limits. There were no cash equivalents outstanding as of August 31, 2020 and 2019.

Accounts Receivable

Trade accounts receivable are carried at their estimated collectible amounts. Trade credit is generally extended on a short-term basis and thus does not bear interest. Trade accounts receivables are periodically evaluated for collectability based on past credit history and their current financial condition.

The Company maintains reserves for uncollectible accounts receivable and potential sales returns. In aggregate, such reserves reduce our gross accounts receivable to its estimated net realizable value. The Company's allowance for doubtful accounts and sales return reserve was $2,439 and $332, respectively, as of August 31, 2020 and $1,058 and $477, respectively, as of August 31, 2019.

Inventory

Inventories are stated at the lower of cost or net realizable value using the average cost method. The Company's inventory consists of finished goods of $8,546 and $46,408 as of August 31, 2020 and 2019, respectively. The Company establishes reserves for excess and obsolete inventory, based on prevailing circumstances and judgment based on the Company's experience. The Company's inventory reserve was $10,497 and $2,640 as of August 31, 2020 and 2019, respectively. The Company also makes prepayments against the future delivery of inventory classified as prepaid inventory. The Company's prepaid inventory was $3,373 and $7,134 and was included in prepaid expenses and other current assets as of August 31, 2020 and 2019, respectively.

Equity Investment

On January 30, 2020, the Company partnered with XS Financial Inc. ("XS Financial"), formerly Xtraction Services Holding Corp ("Xtraction Services"), a provider of equipment leasing solutions to owners and operators of cannabis and hemp companies in the United States in order to provide such solutions to the Company's network of regulated cannabis CBD operators. The Company's Chief Financial Officer, Stephen Christoffersen, has served on the board of directors for XS Financial since May 2019. Under the terms of its agreement with XS Financial, upon the closing of the transaction, the Company issued 1,653 of its common shares in exchange for10,600 proportionate voting shares of XS Financial (the "XS Shares"), the equivalent of 19.9% of XS Financials' market capitalization on the closing date. On January 30, 2020, the value of the Company's shares issued in exchange for the equity investment in XS Financial was $2,528. The Company's investment in XS Financial is included in "Other assets" on the Company's condensed consolidated balance sheet. The fair value of Company's investment in XS Financial was $1,225 as of August 31, 2020.

Property and Equipment

Property and equipment is recorded at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the shorter of estimated useful life of the asset or the lease term, after the asset is placed in service. The estimated useful lives of the property and equipment are generally as follows: computer software acquired for internal use, three to seven years; computer equipment, two to three years; leasehold improvements, three to 15 years or term of lease; and furniture and equipment, one to seven years. Maintenance and repairs are expensed as incurred. Gains or losses resulting from the retirement or sale of property and equipment are recorded as operating income or expenses, respectively.

Fair Value of Financial Instruments

The fair value of certain of our financial instruments, including cash, accounts receivable, other current assets, accounts payable and liabilities, capital lease obligations and deferred revenue approximate their fair values because of the short-term maturity of these instruments. The carrying amount of the Company's long-term notes payable approximates its fair value based on interest rates available to the Company for similar debt instruments and similar remaining maturities.

Derivative Financial Instruments

The Company does not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. Management evaluates all of the Company's financial instruments, including warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is remeasured at the end of each reporting period.

Concentration of Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents, and accounts receivable. Collateral is not required for accounts receivable. The Company maintains an allowance for its doubtful accounts receivable. This allowance is based upon historical loss patterns, the number of days that billings are past due and an evaluation of the potential risk of loss associated with delinquent accounts. Receivables are written-off and charged against its recorded allowance when the Company has exhausted collection efforts without success. The Company's losses related to collection of trade receivables have consistently been within management's expectations. Due to these factors, no additional credit risk beyond amounts provided for collection losses, which the Company reevaluates on a monthly basis based on specific review of receivable agings and the period that any receivables are beyond the standard payment terms, is believed by management to be probable in the Company's accounts receivable.

The Company purchases products from a small number of suppliers. A change in or loss of these suppliers could cause a delay in filling customer orders and a possible loss of sales, which would adversely affect results of operations; however, management believes that suitable replacement suppliers could be obtained in such an event.

Intangible Assets acquired through Business Combinations

Intangible assets, domain name, trademarks and non-compete agreements that are deemed to have a definite life are amortized over their estimated useful lives and intangible assets with an indefinite life are assessed for impairment at least annually. Quarterly, the Company evaluates the estimated remaining useful life of its intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization.

Impairment Assessment

The Company evaluates intangible assets and long-lived assets for possible impairment periodically and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. This includes but is not limited to significant adverse changes in business climate, market conditions, or other events that indicate an asset's carrying amount may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate. If the undiscounted cash flows used in the test for recoverability are less than the carrying amount of these assets, the carrying amount of such assets is reduced to fair value. The Company evaluates and tests the recoverability of its goodwill for impairment at least annually during its fourth quarter of each fiscal year or more often if and when circumstances indicate that it is more likely than not goodwill may be impaired. The Company completed a quantitative analysis for goodwill and a qualitative assessment for intangible assets and long-lived assets. Based on such analysis, there was impairment loss on intangible assets during the year ended August 31, 2020. There was no impairment of long-lived assets or goodwill during the years ended August 31, 2020 and 2019.

Valuation of Business Combinations and Acquisition of Intangible Assets

The Company records intangible assets acquired in business combinations and acquisitions of intangible assets under the acquisition method of accounting. The Company accounts for acquisitions in accordance with ASC Topic 805, *Business Combinations*. Amounts paid for each acquisition are allocated to the assets acquired and liabilities assumed based on their fair values at the dates of acquisition. The Company then allocates the purchase price in excess of the fair value of the net tangible assets acquired to identifiable intangible assets, including purchased intangibles based on detailed valuations that use

information and assumptions provided by management. The Company allocates any excess purchase price over the fair value of the net tangible and intangible assets acquired to goodwill.

The Company uses the income approach, the relief from royalty method (both a market and income method), and the with and without method to determine the fair values of its purchased intangible assets. The Company uses the probability-weighted expected return method (an income approach) to determine the appropriate amount of contingent consideration to include in the purchase price for an acquisition. The Company bases its revenue assumptions on estimates of relevant market sizes, expected market growth rates, expected industry trends and expected product introductions by competitors. For the intangible assets acquired, the Company used risk-adjusted discount rates ranging from 19% to 26% to discount its projected cash flows. The Company believes that the estimated purchased intangible asset amounts so determined represent the fair value at the date of acquisition and do not exceed the amount a third party would pay for the projects.

The Company also used the income approach (probably weighted cash flow), as described above, to determine the estimated fair value of certain identifiable intangibles assets including domain names and tradenames. Tradenames represent acquired product names that the Company intends to continue to utilize. The Company used the with and without method to ascertain the fair value of the non-competition agreement.

Net Income (Loss) Per Share

The Company computes net income (loss) per common share under ASC Topic 260, *Earnings per Share* ("ASC 260"). Basic net income (loss) per common share is computed by dividing net earnings by the weighted average number of shares of common stock outstanding during the period. Diluted net income (loss) per common share is computed by dividing net earnings by the sum of (a) the weighted average number of shares of common stock outstanding during the period and (b) the potentially dilutive securities outstanding during the period. Stock options and warrants are potentially dilutive securities; and the number of dilutive options and warrants are computed using the treasury stock method.

For the year ended August 31, 2019, net loss is adjusted for changes in fair value of warrants recorded as a liability (see Note 11) and weighted average diluted shares includes dilutive warrants.

The following table sets forth the calculation of basic and diluted net income (loss) per common share.

	August 31, 2020	August 31, 2019
Net loss	$ (77,656)	$ (39,636)
Less: Decrease in fair value of warrants	—	(8,986)
Net loss available to common shareholders	$ (77,656)	$ (48,622)
Weighted average common shares outstanding:		
Basic	114,085	84,880
Net effect of dilutive warrants	—	16
Diluted	114,085	84,896
Net loss per common share per share:		
Basic	$ (0.68)	$ (0.47)
Diluted	$ (0.68)	$ (0.57)

For the year ended August 31, 2020, basic and diluted weighted average shares are the same as the Company generated a net loss for the period and potentially dilutive securities are excluded because they have an anti-dilutive impact. The computation of diluted net loss per share for the year ended August 31, 2020 does not include 10,644 options and 21,737 warrants because their inclusion would have an anti-dilutive effect on net loss per share. The computation of diluted net loss per share for the year ended August 31, 2019 does not include 4,579 options and 4,388 warrants because their inclusion would have an anti-dilutive effect on net loss per share.

Revenue Recognition

The Company adopted ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), using the modified retrospective method. As a practical expedient allowed under ASC 606, the Company applied the new guidance only to contracts that were

not completed as of the date of initial application. The Company did not record any cumulative effect adjustment to retained earnings as of September 1, 2019 and did not record any material adjustment to gross revenue for the fiscal year ended August 31, 2019 as a result of applying the guidance in ASC 606.

The Company markets and sells packaging products, vaporizers, solvents, accessories and branding solutions to customers operating in the regulated medical and recreational cannabis industries.

The Company expenses fulfillment costs as incurred because the amortization period would be less than one year in accordance with the ASC 606 practical expedient.

In accordance with ASC 606, the Company applies the following steps to recognize revenue for the sale of products that reflects the consideration to which the Company expects to be entitled to receive in exchange for the promised goods:

- Identify the contract with a customer

  A contract with a customer exists when the Company enters into an enforceable contract with a customer. The contract is based on either the acceptance of standard terms, or the execution of terms and conditions contracts. These contracts define each party's rights, payment terms and other contractual terms and conditions of the sale. The Company applies judgment in determining the customer's ability and intention to pay, which is based on a variety of factors including the customer's historical payment experience and, in some circumstances, published credit and financial information pertaining to the customer.

- Identify the performance obligations in the contract

  Performance obligations promised in a contract are identified based on the goods that will be transferred to the customer that are both capable of being distinct and are distinct in the context of the contract, whereby the transfer of the goods is separately identifiable from other promises in the contract. The Company has concluded the sale of finished goods and related shipping and handling are accounted for as a single performance obligation.

- Determine the transaction price

  The transaction price is determined based on the consideration to which the Company will be entitled to receive in exchange for transferring goods to the customer. The Company estimates the amount of potential refunds at each reporting period using a portfolio approach of historical data, adjusted for changes in expected customer experience, including seasonality and changes in economic factors.

  Discounts provided to customers are accounted for as an element of the transaction price and as a reduction to revenue. Discounts were $1,603 and $822 for the years ended August 31, 2020 and 2019, respectively.

  Revenue is presented net of taxes collected from customers and remitted to governmental authorities.

- Allocate the transaction price to the performance obligations in the contract

  The Company's products are sold at their standalone selling price.

- Recognize revenue when the Company satisfies a performance obligation

  Revenue is recognized when control of the finished goods is transferred to the customer. Control of the finished goods is transferred at a point in time, upon delivery to the customer. The period of time between the satisfaction of the performance obligation and when payment is due from the customer is not significant. Sales returns are estimated based on historical facts and circumstances.

The Company disaggregates revenue by product category, as it believes it best depicts how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

The Company's disaggregated revenue by product category is as follows:

	For the Years Ended August 31,	
	2020	2019
Vape	$ 73,712	$ 101,704
Packaging, Papers & Supplies	27,125	28,231
Energy and Natural Products	9,345	14,502
Services	3,655	4,517
	$ 113,837	$ 148,954

Warranty Costs

The Company has not had any material historical warranty related expenditures from the sales of its products, which if incurred would result in the return of any defective products by customers.

Stock-based Compensation

The Company accounts for its stock-based awards in accordance with ASC Topic 718, *Compensation* ("ASC 718"), which requires fair value measurement as of the grant date, and recognition of compensation expense for all share-based payment awards made to employees and directors, including restricted stock awards. The fair value of stock options is estimated at the date of grant using the Black-Scholes option-pricing model. The fair value of restricted stock is based on the closing market price of the Company's common stock on the grant date. The fair value is then expensed over the requisite service periods of the awards, which is generally the vesting period and the related amount is recognized in the consolidated statements of operations.

Advertising

The Company conducts advertising for the promotion of its products and services. In accordance with ASC Topic 720 *Other expenses* ("ASC 720"), advertising costs are charged to operations when incurred. Advertising costs were $198 and $1,304 for the fiscal years ended August 31, 2020 and 2019, respectively.

Income Taxes

The Company accounts for income taxes under FASB ASC Topic 740, *Accounting for Income Taxes* ("ASC 740"). As part of the process of preparing the consolidated financial statements, the Company is required to estimate an income tax provision (benefit) in each of the jurisdictions in which it operates. This process involves estimating the current income tax provision (benefit) together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets.

The Company recorded a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. While future taxable income and ongoing prudent and feasible tax planning strategies have been considered in assessing the need for the valuation allowance, in the event the Company determines it would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to the valuation allowance for the deferred tax asset would increase income in the period such determination was made. Likewise, should the Company determine it would not be able to realize all or part of the net deferred tax asset in the future, an adjustment to the valuation allowance for the deferred tax asset would be charged to income in the period such determination was made.

During fiscal 2020 and 2019, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. The net deferred tax liability for fiscal year 2020 and 2019 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets.

Segments

The Company only has a single reportable segment. As defined in ASC Topic 280, *Segment Reporting,* operating segments are components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker, who is the chief executive officer, in deciding how to allocate resources and assess performance. Over the past few

years, the Company has completed a number of acquisitions. These acquisitions have allowed the Company to expand its offerings, presence and reach in the cannabis industry. While the Company has offerings in multiple geographic locations for its products for the cannabis industry, as a result of the Company's acquisitions, the Company's business operates in one operating segment because the majority of the Company's offerings operate similarly, and the Company's chief operating decision maker evaluates the Company's financial information and resources and assesses the performance of these resources on a consolidated basis. Since the Company operates in one reportable segment, all required financial segment information can be found in the consolidated financial statements.

Recent Accounting Pronouncements

Issued but not yet adopted by the Company

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-13, Changes to Disclosure Requirements for Fair Value Measurements, which will improve the effectiveness of disclosure requirements for recurring and nonrecurring fair value measurements. The ASU removes, modifies, and adds certain disclosure requirements and is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The Company is evaluating the potential impact of adoption of this standard on its consolidated financial statements.

In December 2019, the FASB Issued ASU 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting of Income Taxes", which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In January 2020, the FASB issued ASU 2020-1, "Investments - Equity Securities (Topic 321), Investments - Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815) - Clarifying the Interactions between Topic 321, Topic 323, and Topic 815." The ASU is based on a consensus of the Emerging Issues Task Force and is expected to increase comparability in accounting for these transactions. ASU 2016-1 made targeted improvements to accounting for financial instruments, including providing an entity the ability to measure certain equity securities without a readily determinable fair value at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. Among other topics, the amendments clarify that an entity should consider observable transactions that require it to either apply or discontinue the equity method of accounting. For public business entities, the amendments in the ASU are effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. The Company is evaluating the potential impact of adoption of this standard on its consolidated financial statements.

Other accounting standards that have been issued or proposed by the FASB that do not require adoption until a future date are not expected to have a material impact on the condensed consolidated financial statements upon adoption. The Company does not discuss recent pronouncements that are not anticipated to have an impact on or are unrelated to its financial condition, results of operations, cash flows or disclosures.

Update on COVID-19

On March 11, 2020, the World Health Organization ("WHO") recognized COVID-19 as a global pandemic, prompting many national, regional, and local governments, including in the markets that the Company operates in, to implement preventative or protective measures, such as travel and business restrictions, temporary store closures, and wide-sweeping quarantines and stay-at-home orders. As a result, COVID-19 has significantly curtailed global economic activity, including in the regulated cannabis and CBD industries in which the Company operates.

While the Company is actively working to successfully navigate the financial, operational, and personnel challenges presented by the COVID-19 pandemic, the full extent of the impact of COVID-19 on our operational and financial performance will depend on future developments, including the duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent disease spread, all of which are uncertain, out of our control and cannot be predicted at this time.

NOTE 2 – CONCENTRATIONS OF RISK

Supplier Concentrations

The Company purchases inventory from various suppliers and manufacturers. For the year ended August 31, 2020,one vendor accounted for approximately 58% of total inventory purchases. For the year ended August 31, 2019, one vendor accounted for approximately 40% of total inventory purchases.

Customer Concentrations

The Company has a concentration of credit risk with its accounts receivable balance. For the fiscal year ended August 31, 2020,one customer represented approximately 10% of revenue, and approximately 6% of accounts receivable, at August 31, 2020. For the fiscal year ended August 31, 2019,two customers represented approximately 14% and 10% of revenue, respectively, and approximately 18% and 1% of accounts receivable, respectively, at August 31, 2019.

NOTE 3 – SALE OF RUB

On September 21, 2018, Smoke Cartel, Inc. ("Smoke Cartel") and the Company entered into an agreement to sell a web domain and inventory related to the Company's Rolluh-Bowl ("RUB") product line. The Company received 1,410 shares of Smoke Cartel common stock as part of the consideration for this transaction. The fair value of its equity investment as of September 21, 2018 was based upon the closing stock price of Smoke Cartel.

The following sets forth the calculation of the gain on disposition of assets upon completion of the sale:

Fair value of Smoke Cartel as of September 21, 2018	$	1,791
RUB web domain and inventory sold		(537)
Gain on disposition of assets	$	1,254

As of August 31, 2020 and 2019, the fair value of the shares of Smoke Cartel were $155 and $592, respectively, and is recorded in Other assets on the Company's consolidated balance sheet.

NOTE 4 – RELATED-PARTY TRANSACTIONS

The Company sells certain products and supplies to two related parties. Sales recognized during the years ended August 31, 2020 and 2019 from the related parties totaled $1,508 and $1,224, respectively. Total accounts receivable from related parties as of August 31, 2020 and 2019 were $890 and $465, respectively. Further, the Company rents certain warehouse equipment from a related party. During the years ended August 31, 2020 and 2019, total payments of $ 232 and $285, respectively, were made to the related party.

NOTE 5 – PROPERTY AND EQUIPMENT

The major classes of fixed assets consist of the following:

		August 31, 2020		**August 31, 2019**
Machinery and equipment	$	9,540	$	4,430
Vehicles		410		603
Office Equipment		376		3,232
Leasehold improvements		1,591		3,296
Construction in progress		660		1,930
		12,577		13,491
Accumulated Depreciation		(3,776)		(2,437)
	$	8,801	$	11,054

Depreciation expense was $3,270 and $1,549 for the years ended August 31, 2020 and 2019, respectively. The table below summarizes the impact of recording depreciation expense in the Consolidated Statement of Operations in the years ended August 31, 2020 and 2019:

	August 31, 2020	August 31, 2019
Cost of goods sold	$ 686	$ 479
Selling, general and administrative	2,584	1,070
Total depreciation expense	$ 3,270	$ 1,549

NOTE 6 – INTANGIBLE ASSETS AND GOODWILL

Intangible assets consist of the following as of August 31, 2020 and 2019:

		As of August 31, 2020			As of August 31, 2019		
Description	Weighted Average Estimated Useful Life	Gross Carrying Value	Accumulated Amortization	Net Amount	Gross Carrying Value	Accumulated Amortization	Net Amount
Trade name	6 years	$ 1,400	$ (1,400)	$ —	$ 2,600	$ (1,011)	$ 1,589
Non-compete agreement	4 years	2,370	(1,370)	1,000	2,370	(856)	1,514
		$ 3,770	$ (2,770)	$ 1,000	$ 4,970	$ (1,867)	$ 3,103

Amortization expense was $947 and $952 for the years ended August 31, 2020 and 2019, respectively. Impairment loss on intangible assets was $1,156 for the year ended August 31, 2020.

The estimated remaining amortization expense for each of the five succeeding fiscal years:

Year ended August 31,	
2021	$ 447
2022	314
2023	239
	$ 1,000

The following table summarizes the carrying amount of goodwill as of August 31, 2020 and 2019:

	Acquisition Date	
Dank Bottles	November 2015	$ 2,377
CMP Wellness	May 2017	30,612
Summit	May 2018	15,450
Hybrid	July 2018	3,828
		$ 52,267

NOTE 7 – OTHER ASSETS

Other assets consist of the following:

	August 31, 2020	August 31, 2019
Operating lease right-of-use assets	$ 3,127	$ —
Equity investment	2,157	1,648
Debt isuance costs	2,926	3,569
Other assets	372	1,700
	$ 8,582	$ 6,917

NOTE 8 – ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	August 31, 2020	August 31, 2019
Customer deposits	$ 3,188	$ 2,992
Accrued compensation	2,798	3,485
Sales tax payable	727	1,047
Operating lease liability	1,583	—
Other accrued expenses	3,087	1,936
	$ 11,383	$ 9,460

NOTE 9 – LEASES

The Company adopted ASC 842 *"Leases"* ("ASC 842") effective September 1, 2019 utilizing the modified retrospective approach for adoption for all leases that existed at or are commenced after the date of initial application with an option to use certain practical expedients. The package of practical expedients allowed the Company to not reassess: (i) whether any expired or existing contracts are or contain leases, (ii) lease classification for any expired or existing leases, and (iii) initial direct costs for any expired or existing leases. The Company also used (i) hindsight when evaluating contractual lease options, (ii) the practical expedient that allows lessees to treat lease and non-lease components of leases as a single lease component, (iii) the portfolio approach which allows similar leased assets to be grouped and accounted for together, and (iv) the short-term lease for leases with a term of 12 months or less.

The adoption of ASC 842 had a material impact on the condensed consolidated balance sheet due to the recognition of Right of Use ("ROU") assets and lease liabilities. The adoption of this ASC did not have a material impact on the consolidated statement of operations or the consolidated statement of cash flows. The Company did not recognize a material cumulative effect adjustment to the opening balance sheet retained earnings on September 1, 2019. Because the modified retrospective approach was elected, the ASU was not applied to periods prior to adoption and did not have an impact on previously reported results. At adoption, the Company recognized operating lease ROU assets and lease liabilities that reflect the present value of the future payments. As the rate implicit in the lease could not be determined for any of the Company's leases, an estimated incremental borrowing rate of 8.4%, which reflects the interest rate the Company would pay to borrow funds over a similar term and in a similar economic environment, was used to determine the present value of lease payments. Based on the impact of ASC 842 on the lease population, the Company recorded $7.6 million in lease liabilities and $6.8 million for ROU assets based upon the lease liabilities adjusted for deferred rent. ROU assets are included in "Other assets" and lease liabilities are included in "Accrued expenses and other current liabilities" and "Other non-current liabilities" on the Company's condensed consolidated balance sheet.

The Company determines if an arrangement is a lease at inception. The Company leases its facilities and certain office equipment under operating leases which expire on various dates through 2026. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at the commencement date of the lease based on the present value of lease payments over the lease term. When readily determinable, the Company uses the implicit rate in determining the present value of lease payments. The ROU asset also includes any fixed lease payments, including in-substance fixed lease

payments and excludes lease incentives. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Lease term is determined at lease commencement and includes any non-cancellable period for which the Company has the right to use the underlying asset, together with any options to extend that the Company is reasonably certain to exercise.

Operating Lease Liabilities

Operating lease liabilities as of August 31, 2020 consist of the following:

Current portion of lease liabilities	$	1,583
Long term lease liabilities, net of current portion		4,157
Total lease liabilities	$	5,740

Aggregate lease maturities as of August 31, 2020 are as follows:

Year ended August 31,		
2021	$	2,013
2022		1,961
2023		1,362
2024		764
2025		540
Thereafter		39
Total minimum lease payments		6,679
Less imputed interest		(939)
Total lease liabilities	$	5,740

Rent expense was $2,760 for the year ended August 31, 2020. At August 31, 2020, the leases had a weighted average remaining lease term of 3.7 years and a weighted average discount rate of 8.4%. Rent expense for the year ended August 31, 2019 was $2,852, under ASC 840, the predecessor to ASC 842. Amortization on ROU assets was $1,207 for the year ended August 31, 2020. Cash paid for amounts included in the measurement of lease liabilities was $1,740 for the year ended August 31, 2020.

NOTE 10 – DEBT

Gerber Revolving Line

In August 2019, the Company replaced its secured revolving credit facility with Gerber Finance Inc. (the "Gerber Revolving Credit Facility") with a new Monroe Revolving Credit Facility. On August 21, 2019, the Company used a portion of the loan proceeds under the Monroe Revolving Credit Facility to pay in full all amounts due under the Loan Agreement, and the Company terminated the Gerber Revolving Credit Facility and has no further financial obligations under the facility.

Monroe Revolving Credit Facility

On August 21, 2019, the Company and its subsidiaries (collectively, the “Borrowers”) entered into a secured asset based revolving credit facility (the “Monroe Revolving Credit Facility”) with Monroe Capital Management Advisors, LLC, as collateral agent and administrative agent (“Monroe”), and the various lenders party thereto. The Company used a portion of the loan proceeds to pay in full all amounts due under the Gerber Revolving Line. The financing agreement for the Monroe Revolving Credit Facility (the “Monroe Financing Agreement”) provides for a total borrowing commitment of $35.0 million to be made in the form of revolving loans, subject to a borrowing base, together with the ability by the Company, upon the satisfaction of certain conditions set forth in the Monroe Financing Agreement, to increase the size of such commitment to $ 50 million. The Monroe Revolving Credit Facility also includes an accordion feature that permits the Borrowers to increase the available revolving commitments under the Monroe Revolving Credit Facility by up to an additional $15 million, subject to satisfaction of certain conditions.

All amounts advanced under the Monroe Revolving Credit Facility will bear interest at a rate per annum equal to either:

- 5.25% plus the greatest of: (a) 5.50%; (b) the Federal Funds Rate plus 0.50%; (c) the quotient of (i) the LIBOR rate, divided by (ii) the difference of 100 percent minus, for any lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System of the United States (or its successor) for determining reserve requirements of that lender; plus 1.00%; and (d) the Prime Rate; or
- 8.50% plus the greater of (a) the quotient of (i) the LIBOR rate, divided by (ii) the difference of one minus the stated maximum reserve percentage to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities; and (b) 1.00%.

As of August 31, 2020, the interest rate was 8.5%. The Monroe Revolving Credit Facility has a five-year term, maturing on August 21, 2024, and is secured by a first priority lien on substantially all of the assets of the Company and its subsidiaries.

The Monroe Revolving Credit Facility also contains customary representations and warranties, affirmative and negative covenants, including a financial covenant requiring certain minimum availability, and events of default. As of August 31, 2020, there was no balance outstanding under the facility. As of August 31, 2019, the outstanding balance under the facility was $12.3 million.

The Company incurred closing costs associated with the Monroe Revolving Credit Facility in the amount of $2,672, which were deferred and amortized over the 5-year term of the Monroe Revolving Credit Facility on a straight-line basis. As of August 31, 2020, unamortized deferred closing costs of $ 2,057 is included in Other assets. Interest expense and amortization of debt discount, associated with the Monroe Revolving Credit Facility during the year ended August 31, 2020 amounted to $565 and $614, respectively.

Monroe Warrants

Also on August 21, 2019, in connection with, and as a condition to the consummation of, the Monroe Revolving Credit Facility, we entered into a subscription agreement (the "Subscription Agreement") with certain entities affiliated with Monroe (collectively, the "Subscribers"), pursuant to which we issued to the Subscribers warrants (the "Monroe Warrants") to purchase up to an aggregate of 500 share of our common stock, at an exercise price of $4.25, being the arithmetic average of the closing price of our common stock for the 10 consecutive trading days prior to the date of issuance (subject to customary adjustment upon subdivision or combination of our common stock). The Monroe Warrants are immediately exercisable and may be exercised at any time, and from time to time, on or before the fifth anniversary of the date of issuance. The Monroe Warrants include a "blocker" provision that, subject to certain exceptions described in the Monroe Warrants, prevents the Subscribers from exercising the Monroe Warrants to the extent such exercise would result in a Subscriber together with certain affiliates owning in excess of 4.99% of our common stock outstanding immediately after giving effect to such exercise.

The Monroe Warrants were classified as equity. The estimated fair value of the Monroe Warrants was $989 as of August 31, 2019 and was computed using the Black-Scholes model.

Senior Note with HB Sub Fund

On April 29, 2019, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with an institutional investor (the "Investor"), pursuant to which the Company agreed to issue and sell, and the Investor agreed to purchase, a senior note (the "Original Note") in a private placement offering in the aggregate principal amount of $21.3 million with an original issue discount of $1.3 million, and received net proceeds of $20.0 million. The Original Note was a senior unsecured obligation, and unless earlier redeemed, was set to mature on October 30, 2020. The Original Note did not bear interest, except upon the occurrence of an event of default.

On August 21, 2019, the Company entered into an exchange agreement (the "Exchange Agreement") with the Investor in order to amend and waive certain provisions of the Securities Purchase Agreement and the Original Note and exchange the Original Note for (i) a new senior note (the "First Amended Senior Note") for the same aggregate principal amount as the Original Note and (ii) a warrant to purchase up to 650,000 shares of our common stock at an exercise price of $4.25. The Warrants have an expiration date of August 21, 2024 and have not been exercised. As of August 21, 2019, the Warrants were reclassified from a derivative liability to equity with a corresponding adjustment to additional paid-in capital. The fair value of the Warrants was determined using a Black-Scholes model as of August 21, 2019 and was equal to $792. Similar to the terms of the Original Note, the First Amended Senior Note was set to mature on October 30, 2020, at which time the Company would have had to pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued

and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the First Amended Senior Note did not bear interest except upon the occurrence of an event of default.

On November 8, 2019, the Company entered into a Second Exchange Agreement ("Second Exchange Agreement") with the Investor, pursuant to which the Company amended the First Amended Senior Note (the "Second Amended Senior Note"). Pursuant to the terms of the Second Amended Senior Note, the maturity date was extended to April 29, 2021, and the aggregate principal amount of the Second Amended Senior Note was increased to approximately $24.0 million and the original issue discount was increased to $1.5 million. Upon maturity of the Second Amended Senior Note, the Company would have had to pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the Second Amended Senior Note did not bear interest except upon the occurrence of an event of default.

On June 9, 2020, the Company entered into a Third Exchange Agreement (the "Third Exchange Agreement") with the Investor in order to (x) amend and waive certain provisions of the Securities Purchase Agreement and the Second Amended Senior Note, and (y) exchange the Second Amended Senior Note without any cash consideration for (i) a new senior note in the aggregate principal amount of $22.0 million (the "Third Amended Senior Note") and (ii) 5,347,594 shares of the Company's common stock (the "Exchange Shares"). The exchange of principal and Exchange Shares was accounted for as an extinguishment of debt, and a loss on extinguishment of $1.65 million was recorded in the statement of operations for the year ended August 31, 2020.

Similar to the terms of the Second Amended Senior Note, the Third Amended Senior Note will mature on April 29, 2021, subject to the Investor's right to extend such maturity date. Upon maturity, the Company must pay the Investor an amount in cash representing the aggregate outstanding principal, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the First Amended Senior Note and the Second Amended Senior Note, the Third Amended Senior Note will not bear interest except upon the occurrence (and during the continuance) of an Event of Default (as such term is defined in the Third Amended Senior Note), in which case the Third Amended Senior Note will bear interest at a rate of 18.0% per annum (the "Default Rate").

The Third Amended Senior Note is redeemable by the Company at any time after the issuance in an amount equal to the outstanding principal and any accrued interest or late charges. The Third Amended Senior Note includes customary affirmative and negative covenants, including a limitation on the Company's ability to incur additional indebtedness, subject to certain permitted exceptions. The Third Amended Senior Note includes customary events of default including, among others, payment defaults, breach of covenant defaults, bankruptcy and insolvency defaults, cross defaults with certain indebtedness, a change of control default, judgment defaults, and inaccuracies of representations and warranties defaults. Similar to the terms of the Original Note, the Investor may require the Company to redeem, upon the occurrence of an Event of Default, all or a portion of the Third Amended Senior Note at a redemption premium of 135% of the outstanding principal and any accrued interest or late charges. Similar to the terms of the Original Note, any amount of principal or other amounts due to the Investor under the Securities Purchase Agreement or the Third Amended Senior Note that is not paid when due (except to the extent such amount is simultaneously accruing interest at the Default Rate) will result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the Default Rate from the date such amount was due until the same is paid in full.

PPP Loan

On April 30, 2020, the Company qualified for and received a loan pursuant to the Paycheck Protection Program, a program implemented by the U.S. Small Business Administration under the Coronavirus Aid, Relief, and Economic Security Act, from a qualified lender (the "PPP Lender"), for an aggregate principal amount of approximately $1.9 million (the "PPP Loan"). The PPP Loan bears interest at a fixed rate of 1.0% per annum, with the first six months of interest deferred, has a term of two years, and is unsecured and guaranteed by the U.S. Small Business Administration. The principal amount of the PPP Loan is subject to forgiveness under the Paycheck Protection Program upon the Company's request to the extent that the PPP Loan proceeds are used to pay expenses permitted by the Paycheck Protection Program, including payroll costs, covered rent and mortgage obligations, and covered utility payments incurred by the Company. The Company has applied for forgiveness of the PPP Loan with respect to these covered expenses. To the extent that all or part of the PPP Loan is not forgiven, the Company will be required to pay interest on the PPP Loan at a rate of 1.0% per annum, and commencing in January 2021 principal and interest payments will be required through the maturity date in May 2022. The terms of the PPP Loan provide for customary events of default including, among other things, payment defaults, breach of representations and warranties, and insolvency events. The PPP Loan may be accelerated upon the occurrence of an event of default.

NOTE 11 – WARRANT LIABILITY

In June 2018, the Company issued 3,750 five-year warrants to investors in a registered direct offering (the "Offering"). Pursuant to ASC Topic 815, the initial fair value of the warrants of $15,350 was recorded as a warrant liability on the issuance date. The estimated fair values of the warrants were computed at issuance using a Black-Scholes option pricing model, with the following assumptions: stock price $5.56 volatility 78.1%, risk-free rate 2.74%, annual dividend yield 0% and expected life 5.0 years.

The estimated fair value of the outstanding warrant liabilities was $365 and $5,444 as of August 31, 2020 and 2019, respectively.

Increases or decreases in fair value of the warrant liability are included as a component of total other expense in the accompanying consolidated statements of operations for the respective period. The changes to the liability for warrants resulted in a decrease of $5,079 and $8,986 in warrant liability and a corresponding gain included in other income for the years ended August 31, 2020 and 2019.

The estimated fair value of the warrants was computed as of August 31, 2020 using the Black Scholes model with the following assumptions: stock price $0.63, volatility 95.5%, risk-free rate 0.15%, annual dividend yield 0% and expected life 2.8 years.

NOTE 12 – FAIR VALUE OF FINANCIAL INSTRUMENTS

Fair value measurements are performed in accordance with the guidance provided by ASC Topic 820, *"Fair Value Measurements and Disclosures."* ASC 820 defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or parameters are not available, valuation models are applied.

ASC 820 establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Assets and liabilities recorded at fair value in the financial statements are categorized based upon the hierarchy of levels of judgment associated with the inputs used to measure their fair value. Hierarchical levels directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities, are as follows:

Level 1 – Quoted prices in active markets for identical assets or liabilities that an entity has the ability to access.

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 supportable by little or no market activity and that are significant to the fair value of the asset or liability.

The carrying amounts of the Company's financial instruments, including cash and cash equivalents, equity investments, accounts receivable, accounts payable and accrued liabilities, capital lease obligations and deferred revenue approximate their fair values based on their short-term nature. The carrying amount of the Company's long-term notes payable approximates its fair value based on interest rates available to the Company for similar debt instruments and similar remaining maturities.

The Company accounts for its investment in Smoke Cartel at fair value. On September 21, 2018, Smoke Cartel and the Company entered into an agreement to sell the RUB web domain and inventory related to this product line and in exchange, received 1,410 shares of Smoke Cartel common stock (see Note 3 above.) The fair value of its investment as of August 31, 2020 and August 31, 2019 was based upon the closing stock price of Smoke Cartel. The investment was classified as a Level 2 financial instrument.

The Company accounts for its investment in Xtraction Services at fair value. The fair value of the Company's investment at August 31, 2020 was based upon the closing price of Xtraction Services' common stock on each respective date. The investment was classified as a Level 2 financial instrument.

In connection with the Company's registered direct offering in June 2018, the Company issued warrants to purchase shares of its common stock which are accounted for as a warrant liability (see Note 11 above.) The estimated fair value of the derivative

is recorded using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

In connection with the Company's private placement offering in April 2019, the Company entered into a Securities Purchase Agreement, whereby it granted to the Investor participation rights in future financing transactions up to an aggregate of 15% of such transactions (or, except for certain permitted indebtedness, up to an aggregate of100% of debt issuances). These participation rights were recorded as a derivative liability with estimated fair value determined using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

The following table details the fair value measurement within the fair value hierarchy of the Company's financial instruments, which includes the Level 2 assets and the Level 3 liabilities:

	Fair Value at August 31, 2020			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Equity investment	$ 2,157	$ —	$ 2,157	$ —
Total assets	$ 2,157	$ —	$ 2,157	$ —
Liabilities:				
Warrant liability	$ 365	$ —	$ —	$ 365
Total liabilities	$ 365	$ —	$ —	$ 365

	Fair Value at August 31, 2019			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Equity investment	$ 1,648	$ —	$ 1,648	$ —
Total assets	$ 1,648	$ —	$ 1,648	$ —
Liabilities:				
Warrant liability	$ 5,444	$ —	$ —	$ 5,444
Total liabilities	$ 5,444	$ —	$ —	$ 5,444

The following table reflects the activity for the Company's warrant derivative liability for the June 2018 registered offering measured at fair value using Level 3 inputs:

	Warrant Liability
Balance at August 31, 2018	$ 14,430
Adjustments to estimated fair value	(8,986)
Balance at August 31, 2019	5,444
Adjustments to estimated fair value	(5,079)
Balance at August 31, 2020	$ 365

The following table reflects the activity for the Company's participation rights derivative liability for the April 2019 private debt offering measured at fair value using Level 3 inputs:

	Participation Rights Derivative Liability
As of April 30, 2018	$ 1,100
Adjustments to estimated fair value	(308)
Reclassification to equity	(792)
Balance at As of August 31, 2019	$ —

NOTE 13 – STOCKHOLDERS' EQUITY

Preferred Stock

The authorized preferred stock is 10,000 shares with a par value of $0.001. As of August 31, 2020 and 2019, the Company has no shares of preferred stock issued or outstanding.

Common Stock

The authorized common stock is 265,000 shares with a par value of $0.001. As of August 31, 2020 and 2019, 125,708 and 90,041 shares were issued and outstanding, respectively.

On September 26, 2019, the Company entered into purchase agreements with accredited investors pursuant to which the Company issued and sold an aggregate of 17,198 units, with each unit consisting of one share of its common stock and a warrant to purchase half a share of common stock in a registered direct offering (the "September 2019 Offering"). The purchase price for a unit was $1.75. The closing of the September 2019 Offering occurred on September 30, 2019 and resulted in aggregate gross proceeds of approximately $30.1 million. The aggregate net proceeds from the September 2019 offering, after deducting the placement agent fees and other offering expenses, was approximately $27.6 million. Subject to certain ownership limitations, the warrants were immediately exercisable at an exercise price equal to $2.25 per share of common stock. The warrants are exercisable for five years from the date of issuance.

On February 6, 2020, the Company entered into purchase agreements with certain accredited investors pursuant to which the Company issued and sold an aggregate of 10,000 units, with each unit consisting of one share of its common stock and a warrant to purchase half a share of its common stock in a registered direct offering (the "February 2020 Offering"). The purchase price for a unit was $1.60. The closing of the February 2020 Offering occurred on February 10, 2020 and resulted in aggregate gross proceeds to the Company of approximately $16.0 million. The aggregate net proceeds from the February 2020 Offering, after deducting the placement agent fees and other offering expenses, was approximately $14.6 million. Subject to certain ownership limitations, the warrants were immediately exercisable at an exercise price equal to $2.00 per share of common stock. The warrants are exercisable for five years from the date of issuance.

Share-based Compensation

The Company recorded total stock-based compensation expense of $14,008 and $13,384 for the years ended August 31, 2020 and 2019, respectively, in connection with the issuance of shares of common stock and options to purchase common stock. Stock-based compensation expense is included in selling, general and administrative expense in the Consolidated Statement of Operations.

Stock Incentive Plan

The Company's 2016 Stock Incentive Plan (the "2016 Plan") was adopted on February 9, 2016. The Company is currently authorized to issue up to 15,000 shares of common stock under the 2016 Plan in the form of stock options and other stock-based awards to officers, employees, non-employee directors and consultants of the Company and its subsidiaries. The Company believes that such awards better align the interests of its employees with those of its shareholders. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of grant; those option awards generally vest based on three years of continuous service and have 10-year contractual terms.

The Company estimates the fair value of share-based compensation utilizing the Black-Scholes option pricing model, which is dependent upon several variables such as the expected option term, expected volatility of its stock price over the expected option term, expected risk-free interest rate over the expected option term, and expected dividend yield rate over the expected option term. The Company believes this valuation methodology is appropriate for estimating the fair value of stock options granted to employees and directors which are subject to ASC 718. These amounts are estimates and thus may not be reflective of actual future results, nor amounts ultimately realized by recipients of these grants. The Company recognizes compensation on a straight-line basis over the requisite service period for each award. The following table summarizes the assumptions the Company utilized to record compensation expense for stock options granted during the years ended August 31, 2020 and 2019:

	August 31, 2020	August 31, 2019
Expected term in years	2.3 - 5.9	3.0
Expected volatility	64% – 120%	64% – 87%
Risk-free interest rate	0.1% – 1.7%	1.39% – 3.01%
Expected dividend yield	0.0%	0.0%

The expected term is based on management judgement and reflects expected exercise patterns. The expected volatility is based on management's analysis of historical volatility. The risk-free interest rate is based on the U.S. Treasury yields with terms equivalent to the expected term of the related option at the time of the grant. While the Company believes these estimates are reasonable, the compensation expense recorded would increase if the expected life was increased, a higher expected volatility was used, or if the expected dividend yield increased.

Stock Options

During the years ended August 31, 2020 and 2019, the Company issued 6,345 and 10,082 stock options, respectively, pursuant to the 2016 Plan. A summary of the Company's stock option activity during the years ended August 31, 2019 and 2020 is presented below:

	Stock Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance Outstanding, August 31, 2018	9,368	$ 3.85	9.1	$ 14,463
Granted	10,082	5.50		
Exercised	(502)	1.20		$ 2,576
Forfeited	(4,187)	4.46		
Balance Outstanding, August 31, 2019	14,761	4.89	9.0	$ 3,192
Granted	6,250	1.20		
Exercised	(9)	2.06		$ 14
Forfeited and cancelled	(10,358)	4.68		
Balance Outstanding, August 31, 2020	10,644	$ 1.58	8.5	$ 232
Vested and expected to vest at August 31, 2020	8,709	$ 1.74	8.3	$ 183
Exercisable, August 31, 2020	5,806	$ 2.19	7.9	$ 108

Stock compensation expense related to stock options was $9,540 and $9,995 for the years ended August 2020 and 2019, respectively. The weighted-average grant-date fair value of options granted during the years ended August 31, 2020 and 2019, was $0.90 and $2.73, respectively.

As of August 31, 2020, there was $7,345 of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plan. The expense is expected to be recognized over a weighted-average period of 1.4 years.

Replacement Options

On July 31, 2020, the Company offered employees and non-employee directors of the Company's Board of Directors ("Eligible Participants") the opportunity to exchange an outstanding option to purchase shares of the Company's common stock ("Eligible Options") for a lesser number of Replacement Options (the "Exchange Offer"). Eligible Participants had until August 28, 2020 to opt in for the Exchange Offer. The number of Replacement Options in the Exchange Offer varied based on the original exercise price of the grant, such that a higher original exercise price resulted in an Exchange Offer for a lower number of Replacement Options.

As a result of the Exchange Offer, 89 Eligible Participants opted in for the Exchange Offer resulting in 7,433 options cancelled and replaced with 5,195 Replacement Options at an exercise price of $0.58 per share. The cancellation and replacement was accounted for as a modification of the original awards pursuant to guidance in ASC 718. For this modification, the fair value of the award is assessed both prior to modification and after modification resulting in incremental expense of $111 recorded at the date of modification.

Restricted Stock

During the year ended August 31, 2020, the Company issued 727 shares of restricted common stock to consultants in exchange for services for a total of $846. During the year ended August 31, 2019, the Company issued 350 shares of restricted common stock to consultants in exchange for services for a total of $1,908.

Stock compensation expense related to restricted stock awards was $4,468 and $3,389, respectively, for the years ended August 31, 2020 and 2019.

During the year ended August 31, 2020, the Company awarded 270 shares of restricted stock units to directors for serving on the board of directors. During the year ended August 31, 2019, no restricted stock units were awarded to directors.

As of August 31, 2020, $1,326 of total unrecognized compensation costs related to restricted stock awards is expected to be recognized over a weighted average period of 1.0 year.

NOTE 14 – INCOME TAXES

For financial reporting purposes, income before income taxes for fiscal 2020 and 2019 includes the following components:

	For the Year Ended August 31,	
	2020	**2019**
Pre-tax loss	$ (77,872)	$ (39,509)
Foreign pre-tax income	187	—
Loss before income taxes (benefit)	$ (77,685)	$ (39,509)

The components of the provision for income taxes for fiscal 2020 and 2019 are as follows:

	For the Year Ended August 31,	
	2020	**2019**
Current		
Federal tax	$ (118)	$ —
State tax	42	17
Foreign tax	—	13
Total	$ (76)	$ 30
Deferred		
Federal tax	12	29
State tax	35	68
Total	47	97
Total tax provision	$ (29)	$ 127

The income tax benefit differs from the amount computed by applying the federal income tax rate to net earnings before income taxes. The provision for income tax consists of the following:

	For the Year Ended August 31,	
	2020	**2019**
Federal income tax/benefit attributable to:		
Income tax provision at statutory rate	$ (16,314)	$ (8,297)
State taxes, net of federal benefit	(4,513)	(2,310)
Change in fair value of warrants	(1,067)	(1,952)
Stock-based and other compensation	790	1,338
Change in Contingent Consideration Payable	—	(374)
Other	112	(64)
Less: Change in valuation of allowance	20,963	11,786
Income tax expense (benefit)	$ (29)	$ 127

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, or the CARES Act, was signed into law. The CARES Act includes tax provisions applicable to businesses, such as net operating losses, enhanced interest deductibility, optional deferral of deposits of payroll taxes and a refundable employee retention payroll tax credit. We have determined that these provisions did not have an impact to our condensed consolidated financial statements for the year ended August 31, 2020.

The tax effects of the temporary differences that give rise to the deferred tax assets and liabilities are as follows:

	For the Year Ended August 31,	
	2020	2019
Deferred tax assets		
Net operating loss carry-forwards	$ 27,036	$ 9,451
Stock-based compensation	4,224	2,519
Inventory	4,074	1,671
Other	1,325	871
	36,659	14,512
Valuation allowance	(33,816)	(12,854)
	2,843	1,658
Deferred tax liabilities		
Depreciation, amortization and other	(2,987)	(1,755)
	(2,987)	(1,755)
Net deferred tax asset (liability)	$ (144)	$ (97)

During fiscal years 2020 and 2019, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely that not will be realized. The net deferred tax liability for fiscal year 2020 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets.

The Company has not identified any unrecognized tax benefits or uncertain tax positions. No liability on uncertain tax positions is recorded on the financial statements as of August 31, 2020. The Company does not expect that its assessment regarding unrecognized tax benefits and uncertain tax positions will materially change over the following 12 months.

As of August 31, 2020, the Company had federal net operating loss (“NOL”) carryforwards of approximately $95.3 million, of which approximately $9.8 million expire in 2038, and the remainder do not expire. As of August 31, 2020, the Company had state net operating loss carryforwards of approximately $ 95.1 million which expire between 2028 and 2039. The 2017 Tax Cuts and Jobs Act ("TCJA") limited the use of NOLs to 80% of taxable income in any one tax period, which applied to years beginning after December 31, 2017. However, as a result of the CARES Act, corporate taxpayers may now use NOLs to fully offset taxable income in the 2018, 2019, and 2020 tax years. The Company has not completed its evaluation of NOL utilization limitations under Internal Revenue Code, as amended (the “Code”) Section 382, change of ownership rules. If the Company had a change in ownership, its NOL’s would be limited as to the amount that could be utilized each year, based on the Code.

The Company includes interest and penalties arising from the underpayment of income taxes in the statements of operations in the provision for income taxes. As of August 31, 2020 and 2019, the Company had no accrued interest or penalties related to uncertain tax positions. As of August 31, 2020, the tax years beginning with the year ended August 31, 2017 remain subject to examination by the Internal Revenue Service and tax years beginning with the year ended August 31, 2016 remaining subject to examination by certain state jurisdictions.

NOTE 15 – COMMITMENTS AND CONTINGENCIES

Other Commitments

In the ordinary course of business, the Company may enter into contractual purchase obligations and other agreements that are legally binding and specify certain minimum payment terms. The Company had no such agreements as of August 31, 2020.

Litigation

The Company may be subject to legal proceedings and claims that arise in the ordinary course of its business.

During fiscal 2019, lawsuits were filed in California federal and state court by various purported shareholders against, the Company, each of the current members of the Company’s Board of Directors, and certain of the Company’s current and former officers, alleging, among other things, certain federal securities law violations and/or related breaches of fiduciary duties in connection with the Company’s April 2019 Restatement of certain prior period financial statements. In general, the lawsuits

assert the same or similar allegations, including that the defendants artificially inflated the Company's securities prices by knowingly making materially false and misleading statements and omissions to the investing public about the Company's financial statements, business, operations, management, and internal controls. These lawsuits are described below.

May v. KushCo Holdings, Inc., et al., filed April 30, 2019, Case No. 8:19-cv-00798-JLS-KES, U.S. District Court for the Central District of California. This putative shareholder class action against the Company and certain of its current and former officers alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder, and seeks unspecified compensatory damages and other relief on behalf of a class of purchasers of the Company's securities between July 13, 2017 and April 9, 2019, inclusive. In September 2019, the Court appointed co-lead plaintiffs and co-lead counsel for the plaintiffs. The lead plaintiffs' amended complaint was filed in November 2019. In February 2020, the Company moved to dismiss the amended complaint. In September 2020, the Court granted the defendants' motion to dismiss with leave to amend. On November 2, 2020, after the lead plaintiffs' failed to file an amended complaint, the Court entered judgment in favor of the defendants, dismissing the action with prejudice.

Salsberg v. Kovacevich, et al., filed May 24, 2019, Case No. 8:19-cv-00998-JLS-KES, U.S. District Court for the Central District of California and *Neysmith v. Baum, et al*., filed May 31, 2019, Case No. 8:19-cv-01070-JLS-KES, U.S. District Court for the Central District of California. This purported shareholder derivative action against certain current and former directors and officers alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and disgorgement of profits, benefits, and compensation obtained by the defendants from the alleged conduct, to be paid to the Company. In September 2019, the Court consolidated these cases. In December 2019, the Court ordered a stay of this action pursuant to a stipulation of the parties.

Savage v. Kovacevich, et al., filed June 14, 2019, Case No. 30-2019-01077191-CU-MC-NJC, Superior Court of California, County of Orange. This purported shareholder derivative action against certain current and former directors and officers alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and unspecified damages and restitution from the defendants, to be paid to the Company. In August 2019, the Court ordered a stay of this action pursuant to a stipulation of the parties.

Bruno, et al. v. Kovacevich, et al., filed September 26, 2019, Case No. A-19-802660-C, Eighth Judicial District Court of the State of Nevada and *Majchrzak v. Kovacevich, et al*., filed October 2, 2019, Case No. A-19-902945-B, First Judicial District Court of the State of Nevada. These purported shareholder derivative actions against certain current and former directors and officers allege, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant in each action and the plaintiffs seek, among other things, equitable relief and unspecified damages from the defendants, to be paid to the Company. In August 2020 and September 2020, the Court ordered stays of the Majchrzak action and the Bruno action, respectively, pursuant to the plaintiffs' unopposed motions.

In addition, after fiscal 2019, in October 2020, a purported Company shareholder filed a shareholder derivative action and putative class action complaint (*Choate v. Kovacevich, et al*., filed October 1, 2020, Case No. 8:20-cv-01904-JLS-KES, U.S. District Court for the Central District of California) against certain current Company directors. The suit alleges, among other things, breach of fiduciary duty with respect to the administration of the Company's 2016 Stock Incentive Plan. The Company is named as a nominal defendant. The suit seeks declaratory relief and, from the director defendants, unspecified compensatory damages and other relief.

NOTE 16 – 2020 PLAN & RESTRUCTURING CHARGES

During the second quarter of fiscal 2020, the Company adopted and implemented a comprehensive strategic plan (the "2020 Plan") to more effectively execute the Company's strategy of focusing its resources on more established, financially stable, and creditworthy customers (namely multi-state operators, licensed producers, and leading brands). In connection with the 2020 Plan, the Company began implementing a restructuring process designed to rationalize all aspects of its operations by, among other things, significantly reducing its overhead, implementing tighter expense controls, consolidating its warehouses, reducing its inventory, and drastically altering its sales strategy to focus more on these customers. The Company believes that this strategic shift and associated restructuring has resulted in a better forecast of demand, reduction of inventory and warehouse space, improved collections and cash flow, and potential revenue upside from these customers' continued expansion and consolidation in the marketplace.

The Company has completed, or is in the process of completing, the following restructuring activities in connection with the 2020 Plan:

- *Severance*: The Company has implemented a more efficient and automated approach to serving a smaller more targeted group of customers, which requires substantially fewer dedicated sales representatives, project managers, warehouse personnel, and other related personnel. As part of this process, the Company determined that certain positions at the Company were no longer essential to the execution of the Company's strategy going forward. As a result, the Company underwent reductions in force to right-size and better align its workforce with this new strategy. During the year ended August 31, 2020, the Company terminated 98 employees, and incurred $1,247 in severance-related restructuring costs.

- *Facility-Related Lease Termination and Exiting Costs*: As a result of the Company's decision to discontinue nearly all of its stock inventory, the Company determined that it no longer needs the vast majority of its current warehouse space, and is currently in the process of negotiating with its landlords to terminate or sublease and exit the impacted warehouses. During the year ended August 31, 2020, the Company terminated leases and vacated its Las Vegas, Nevada, Santa Rosa, California, Osage, Colorado facilities and subleased its Garden Grove, California facility. The Company is planning to vacate additional facilities throughout fiscal year 2021 in order to consolidate its warehouse footprint. During the year ended August 31, 2020, the Company incurred $0.2 million in restructuring exit cost.

- *Asset Impairment*: With the Company's planned facility closures, the Company has determined that the fair value of its fixed assets at these closing facilities are now below their carrying value, and that an impairment has occurred. The Company also determined that its product molds and tooling are no longer necessary assets, given its shift to focus exclusively on custom and best-selling stock inventory, creating an additional need for impairment. As a result, the Company recognized a total impairment charge related of approximately $3.9 million related to these fixed assets during the year ended August 31, 2020. In addition, because of the Company's decision to consolidate its warehouses, the Company determined that it will incur impairment charges to its ROU assets. Based on internal calculations, the Company recognized impairment charges related to these assets of $3.0 million during the year ended August 31, 2020.

The Company expects to incur a total of $9.6 million in restructuring charges upon the completion of the 2020 Plan, which represents the Company's best estimate as of August 31, 2020. The 2020 Plan is expected to be completed by the end of fiscal year 2021. The recognition of restructuring charges requires that the Company make certain judgments and estimates regarding the nature, timing and amount of costs associated with the planned reductions of workforce and facility, ROU and asset impairment costs. At the end of each reporting period, the Company will evaluate the remaining accrued balance to ensure that no excess accruals are retained, and the utilization of the provisions are for their intended purpose in accordance with developed plans. The following table reflects the movement of activity of the restructuring reserve for the year ended August 31, 2020:

	Severance related cost	Facility, ROU and asset impairment	Facility exit cost	Total
Balance at December 1, 2019	$ —	$ —	$ —	$ —
Provisions/Additions	1,247	6,895	216	8,358
Utilized/Paid	(1,247)	(6,895)	(216)	(8,358)
Balance at August 31, 2020	$ —	$ —	$ —	$ —

Expenses incurred under the 2020 Plan during the year ended August 31, 2020 are included within "Restructuring costs" in the consolidated statement of operations.

NOTE 17 – SUBSEQUENT EVENT

Fourth Exchange Agreement and Fourth Exchange Note

On November 10, 2020, the Company entered into a Fourth Exchange Agreement (the "Fourth Exchange Agreement") with HB Sub Fund in order to (x) amend and waive certain provisions of the Securities Purchase Agreement and the Third Amended Senior Note, and (y) exchange the Third Amended Senior Note without any cash consideration for (i) a new senior note in the aggregate principal amount of $19.0 million (the "Fourth Amended Senior Note") and (ii) 4,687,500 shares of our common stock (the "Fourth Exchange Shares").

Similar to the terms of the Third Amended Senior Note, the Fourth Amended Senior Note will mature on April 29, 2021, subject to HB Sub Fund's right to extend such maturity date. Upon maturity, we must pay HB Sub Fund an amount in cash representing the aggregate outstanding principal, plus any accrued and unpaid interest and accrued and unpaid late charges.

Similar to the terms of the Original Note, the Fourth Amended Senior Note will not bear interest except upon the occurrence (and during the continuance) of an Event of Default (as such term is defined in the Fourth Amended Senior Note), in which case the Fourth Amended Senior Note will bear interest at a rate of 18.0% per annum (the "Default Rate").

The Fourth Amended Senior Note is redeemable by us at any time after the issuance in an amount equal to the outstanding principal and any accrued interest or late charges. The Fourth Amended Senior Note contains customary affirmative and negative covenants, including a limitation on our ability to incur additional indebtedness, subject to certain permitted exceptions. The Fourth Amended Senior Note includes customary events of default including, among others, payment defaults, breach of covenant defaults, bankruptcy and insolvency defaults, cross defaults with certain indebtedness, a change of control default, judgment defaults, and inaccuracies of representations and warranties defaults. Similar to the terms of the Original Note, HB Sub Fund may require us to redeem, upon the occurrence of an Event of Default, all or a portion of the Fourth Amended Senior Note at a redemption premium of 135% of the outstanding principal and any accrued interest or late charges. Similar to the terms of the Original Note, any amount of principal or other amounts due to HB Sub Fund under the Securities Purchase Agreement or the Fourth Amended Senior Note that is not paid when due (except to the extent such amount is simultaneously accruing interest at the Default Rate) will result in a late charge being incurred and payable by us in an amount equal to interest on such amount at the rate of 18.0% per annum from the date such amount was due until the same is paid in full.

Item 16. Form 10-K Summary

None

SIGNATURES

Pursuant to the requirements of Section 13 and 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: November 10, 2020

By: /s/ Nicholas Kovacevich

Nicholas Kovacevich

Chairman and Chief Executive Officer

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

Signature	Title	Date
/s/ Nicholas Kovacevich Nicholas Kovacevich	Chairman and Chief Executive Officer (Principal Executive Officer)	November 10, 2020
/s/ Stephen Christoffersen Stephen Christoffersen	Chief Financial Officer (Principal Financial Officer)	November 10, 2020
/s/ Eric Baum Eric Baum	Director	November 10, 2020
/s/ Barbara Goodstein Barbara Goodstein	Director	November 10, 2020
/s/ Dallas Imbimbo Dallas Imbimbo	Director	November 10, 2020
/s/ Donald Hunter Donald Hunter	Director	November 10, 2020
/s/ Peter Kadens Peter Kadens	Director	November 10, 2020

EXHIBIT INDEX

The following exhibits are filed as part of this Annual Report on Form 10-K. Where such filing is made by incorporation by reference to a previously filed document, such document is identified.

Exhibit Number	Description of Exhibit
2.1†	Merger Agreement dated as of May 1, 2017 by and among KushCo Holdings, Inc., KBCMP, Inc., Lancer West Enterprises, Inc., Walnut Ventures, Jason Manasse, and Theodore Nicols (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 000-55418), filed May 4, 2017).
2.2†	Agreement and Plan of Merger, dated as of April 10, 2018, by and among KushCo Holdings, Inc., KCH Energy, LLC, Summit Innovations, LLC and Mark Driver (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 000-55418), filed April 10, 2018).
2.3	Amendment to Agreement and Plan of Merger, dated as of May 2, 2018, by and among KushCo Holdings, Inc., KCH Energy, LLC, Summit Innovations, LLC and Mark Driver (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K (File No. 000-55418), filed May 3, 2018).
3.1	Amended and Restated Articles of Incorporation of KushCo Holdings, Inc. filed with the Secretary of State of Nevada on August 29, 2018 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 4, 2018).
3.2	Amended and Restated Bylaws of KushCo Holdings, Inc. (incorporated by reference to Exhibit 3.1.1 to the Quarterly Report on Form 10-Q (File No. 000-55418), filed July 9, 2020).
4.1	Description of Registrant's Securities (incorporated by reference to Exhibit 4.1 to the Form 10-K (File No. 005-55418), filed November 12, 2019).
4.2	Form of Warrant dated as of June 12, 2018 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed June 8, 2018).
4.3	Form of Warrant dated as of January 18, 2019 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
4.4	Form of indenture for senior debt securities and the related form of senior debt security (incorporated by reference to Exhibit 4.1 to the Form S-3 (File No. 333-231019), filed April 25, 2019).
4.5	Form of indenture for subordinated debt securities and the related form of subordinated debt security (incorporated by reference to Exhibit 4.2 to the Form S-3 (File No. 333-231019), filed April 25, 2019).
4.6	Form of Monroe Warrant, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.7	Registration Rights Agreement, dated as of August 21, 2019, by and among KushCo Holdings, Inc. and the investors listed therein (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.8	Senior Note to HB Sub Fund II LLC, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.3 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.9	Warrant to HB Sub Fund II LLC, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.4 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.10	Form of Warrant, dated as of September 30, 2019 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).
4.11	Senior Note to HB Sub Fund II LLC, dated as of November 8, 2019 (incorporated by reference to Exhibit 4.11 to the Form 10-K (File No. 005-55418), filed November 12, 2019).
4.12	Form of Warrant, dated as of February 6, 2020 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed February 10, 2020).

Exhibit Number	Description of Exhibit
4.13	Form of Senior Note to HB Sub Fund II LLC, dated as of June 9, 2020 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed June 10, 2020).
4.14*	Senior Note to HB Sub Fund II LLC, dated as of November 10, 2020.
10.1#	Offer Letter, dated as of July 3, 2017, by and between KushCo Holdings, Inc. and Jim McCormick (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 3, 2017).
10.2#	KushCo Holdings, Inc. 2016 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.7 to the Quarterly Report on Form 10-Q (File No. 000-55418), filed April 15,2019).
10.3	Asset Purchase Agreement, dated as of September 21, 2018, by and among KushCo Holdings, Inc. and Smoke Cartel, Inc. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 26,2018).
10.4	Lease, dated as of February 9, 2017, by and between KIM International Corporation and ZUREIT Holdings, Ltd. (incorporated by reference to Exhibit 10.13 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.5	Lease, dated as of April 12, 2018, by and between KIM International Corporation and ZUREIT Holdings, Ltd. (incorporated by reference to Exhibit 10.14 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.6#	Amended and Restated Offer Letter by and between KushCo Holdings, Inc. and Jason Vegotsky, dated as of November 21, 2018 (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.7#	Offer Letter by and between KushCo Holdings, Inc. and Christopher Tedford, dated as of November 8, 2018 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed November 21, 2018).
10.8	Form of Securities Purchase Agreement, dated as of January 18, 2019, by and among KushCo Holdings, Inc. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
10.9	Placement Agency Agreement, dated as of January 15, 2019, by and between KushCo Holdings, Inc. and Alliance Global Partners (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
10.10#	Severance Agreement, dated as of February 22, 2019, by and between KushCo Holdings, Inc. and Jim McCormick (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed February 28, 2019).
10.11#	Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Rodrigo de Oliveira (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.13#	Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Jason Vegotsky (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.14#	Amendment to Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Christopher Tedford (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.15	Securities Purchase Agreement, dated as of April 29, 2019, between KushCo Holdings, Inc. and HB Sub Fund II LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed April 30, 2019).

Exhibit Number	Description of Exhibit
10.16#	Amendment to Offer Letter by and between Rodrigo de Oliveira and KushCo Holdings, Inc., dated as of June 7, 2019 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed June 11, 2019).
10.17	Financing Agreement, dated as of August 21, 2019, by and among Kim International Corporation and each of its parent and subsidiaries listed as a borrower, as Borrowers, each subsidiary of Borrowers listed as a guarantor, as Guarantors, the lenders from time to time a party thereto, as Lenders, and Monroe Capital Management Advisors, LLC, as Administrative Agent and Collateral Agent (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.18	Subscription Agreement, dated as of August 21, 2019, by and among KushCo Holdings, Inc. and the subscribers listed therein (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.19	Exchange Agreement, dated as of August 21, 2019, by and between KushCo Holdings, Inc. and HB Sub Fund II LLC (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.20	Form of Securities Purchase Agreement, dated as of September 26, 2019, by and among KushCo Holdings, Inc. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).
10.21	Placement Agency Agreement, dated as of September 26, 2019, by and among KushCo Holdings, Inc., Jefferies LCC and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).
10.22	Second Exchange Agreement, dated as of November 8, 2019, by and between KushCo Holdings, Inc. and HB Sub Fund II LLC (incorporated by reference to Exhibit 10.22 to the Form 10-K (File No. 005-55418), filed November 12, 2019).
10.23	Limited Consent and First Amendment to Financing Agreement, dated as of November 8, 2019, by and among KushCo Holdings, Inc., certain of its subsidiaries and Monroe Capital Management Advisors, LLC (incorporated by reference to Exhibit 10.23 to the Form 10-K (File No. 005-55418), filed November 12, 2019).
10.24	Form of Securities Purchase Agreement, dated as of February 6, 2020, by and among KushCo Holdings, Inc. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed February 10, 2020).
10.25	Placement Agency Agreement, dated as of February 6, 2020, by and between KushCo Holdings, Inc. and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 000-55418), filed February 10, 2020).
10.26	Third Exchange Agreement, dated as of June 9, 2020, by and between KushCo Holdings, Inc. and the investor signatory thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed June 10, 2020).
10.27*	Fourth Exchange Agreement, dated as of November 10, 2020, by and between KushCo Holdings, Inc. and the investor signatory thereto.
14.1	KushCo Holdings, Inc. Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14.1 to the Current Report on Form 8-K (File No. 000-555418), filed March 13,2018).
18.1	Preferability Letter of RBSM LLP, dated November 28, 2018 (incorporated by reference to Exhibit 18.1 to the Annual Report on Form 10-K (File No. 000-55418), filed November 29, 2018).
21.1*	Subsidiaries of the Registrant
23.1*	Consent of Independent Registered Public Accounting Firm

Exhibit Number	Description of Exhibit
31.1*	Certification of principal executive officer pursuant to Rules 13a-15(e) and 15d-15(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of principal financial and accounting officer pursuant to Rules 13a-15(e) and 15d-15(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of principal executive officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certification of principal financial and accounting officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Labels Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.

The foregoing descriptions of the Second Exchange Agreement, the Amended Senior Note and the Limited Consent and First Amendment to Financing Agreement are summaries only, do not purport to be complete and are qualified in their entirety by the full text of these documents, copies of which are attached as Exhibits 10.22, 10.23 and 10.24, respectively, and incorporated herein by reference.

* Filed herewith.
** This certification shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.
# Management contract or compensatory plan or arrangement.
† The schedules and exhibits to this agreement have been omitted. A copy of any omitted schedule or exhibit will be furnished to the SEC supplementally upon request.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), THE CHIEF FINANCIAL OFFICER, A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE CHIEF FINANCIAL OFFICER MAY BE REACHED AT THE FOLLOWING ADDRESS: 11958 MONARCH STREET, GARDEN GROVE, CA 92841.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBJECT TO THAT CERTAIN CONSENT AND INTERCREDITOR AGREEMENT (AS AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), DATED AS OF AUGUST 21, 2019 BY AND AMONG MONROE CAPITAL MANAGEMENT ADVISORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND EACH OF THE INVESTORS LISTED ON THE SCHEDULE OF INVESTORS ATTACHED THERETO, AND ACKNOWLEDGED BY THE COMPANY AND CERTAIN OF ITS SUBSIDIARIES PARTY THERETO; AND THE HOLDER (AS DEFINED BELOW), BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS NOTE, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

KushCo Holdings, Inc.

Senior Note

Issuance Date: April 30, 2019
First Exchange Date: August 21, 2019
Second Exchange Date: November 8, 2019
Third Exchange Date: June 9, 2020
Fourth Exchange Date: November 10, 2020

Original Principal Amount: U.S. $19,000,000

FOR VALUE RECEIVED, KushCo Holdings, Inc., a Nevada corporation (the "**Company**"), hereby promises to pay to the order of HB Sub Fund II LLC or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and, upon any Event of Default that is continuing, to pay interest ("**Interest**") on any outstanding Principal at the Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Note (including all

Senior Notes issued in exchange, transfer or replacement hereof, this "**Note**") is the only Senior Note issued pursuant to that certain Fourth Exchange Agreement, dated November 10, 2020 (the "**Fourth Exchange Date**"), by and between the Company and the Holder (the "**Fourth Exchange Agreement**"), in exchange, in part, for that certain Senior Note (the "**Third Exchange Note**"), with an initial aggregate principal amount of $22,000,000, issued pursuant to that certain Third Exchange Agreement, dated June 9, 2020 (the "**Third Exchange Date**"), by and between the Company and the Holder (the "**Third Exchange Agreement**"), in exchange, in part, for that certain Senior Note (the "**Second Exchange Note**"), with an initial aggregate principal amount of $23,962,500, issued pursuant to that certain Second Exchange Agreement, dated November 8, 2019 (the "**Second Exchange Date**"), by and between the Company and the Holder (the "**Second Exchange Agreement**"), in exchange, in part, for that certain Senior Note (the "**First Exchange Note**"), with an initial aggregate principal amount of $21,300,000, issued pursuant to that certain Exchange Agreement, dated August 21, 2019 (the "**First Exchange Date**"), by and between the Company and the Holder (the "**First Exchange Agreement**"), which First Exchange Note was issued in exchange, in part, for that certain Senior Note, with an initial aggregate principal amount of $21,300,000 (the "**Original Note**") issued pursuant to that certain Securities Purchase Agreement, dated as of April 30, 2019 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (collectively, the "**Notes**", and such other Senior Notes issued pursuant to the Securities Purchase Agreement or otherwise in exchange, transfer or replacement therefor, if any, collectively, the "**Other Notes**"). Certain capitalized terms used herein are defined in Section 24.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing 100% of the sum of (a) the outstanding Principal, and (B) all accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 17(c)) on the Principal then outstanding hereunder and Interest thereon. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any.

2. INTEREST; INTEREST RATE.

(a) This Note was issued with original issue discount as described in the Securities Purchase Agreement. This Note shall not bear Interest except upon the occurrence (and during the continuance) of an Event of Default (as defined below), in which case this Note shall bear interest at a rate of eighteen percent (18.0%) per annum (the "**Default Rate**"). In the event that such Event of Default is subsequently cured or waived in accordance with the terms of this Note (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date)), Interest hereunder shall cease to accrue as of the calendar day immediately following the date of such cure or waiver; provided that the Interest as calculated and unpaid during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of

Default. To the extent any accrued and unpaid Interest remains outstanding on the Third Exchange Note as of the Fourth Exchange Date, this Note shall as of the Fourth Exchange Date have an identical amount of accrued and unpaid Interest outstanding hereunder; provided, however, Holder hereby acknowledges and agrees that, to the actual knowledge of the Holder as of the Foruth Exchange Date, no Interest has accrued on the Third Exchange Note as of the Fourth Exchange Date.

(b) Interest on this Note shall (i) commence accruing upon the occurrence of an Event of Default, (ii) be computed on the basis of a 360-day year and twelve 30-day months, (iii) be payable in arrears on each Interest Date in accordance with the terms of this Note and (iv) if unpaid on an Interest Date, shall compound on such Interest Date. Interest shall be paid on such Interest Date in cash. Prior to the payment of Interest on an Interest Date, Interest on this Note shall be payable upon any redemption in accordance with Section 7 or any required payment upon any Bankruptcy Event of Default (as defined below).

3. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (iii), (iv) and (v) shall constitute a "**Bankruptcy Event of Default**":

(i) the Company's or any Subsidiary's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

(ii) the redemption of, or acceleration prior to maturity of, at least (x) $2,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) individually or (y) $5,000,000 of Indebtedness, in the aggregate, in either case, of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(iii) bankruptcy, insolvency, reorganization, moratorium or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(iv) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or of any

other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(v)the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of forty-five (45) consecutive days;

(vi)a final judgment or judgments for the payment of money in excess of either (x) $2,000,000, individually, or (y) $5,000,000, in the aggregate, in either case, are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the amounts set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the

case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(vii)the Company and/or any Subsidiary, individually or in the aggregate, either fails to pay, when due, or within any applicable waiver or grace period, any payment with respect to any Indebtedness in excess of (x) $2,000,000, individually, or (y) $5,000,00, in the aggregate, in either case, due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP);

(viii)other than as specifically set forth in another clause of this Section 3(a), the Company or any Subsidiary breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of ten (10) consecutive Trading Days;

(ix)any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of clauses (a), (b), (d), (e) or (n) of Section 9 of this Note;

(x)any Change of Control occurs;

(xi)any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day deliver written notice thereof via facsimile and overnight courier (an "**Event of Default Notice**") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20th) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing

to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 3(b) shall be redeemed by the Company at a price in cash equal to the product of (i) the Outstanding Amount multiplied by (ii) the Redemption Premium (the "**Event of Default Redemption Price**"). Redemptions required by this Section 3(b) shall be made in accordance with the provisions of Section 7. To the extent redemptions required by this Section 3(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Note by the Company, such redemptions shall be deemed to be voluntary prepayments.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash equal to the Event of Default Redemption Price, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other Person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

4. RIGHTS UPON FUNDAMENTAL TRANSACTION. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 4 pursuant to written agreements in form and substance satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts and the interest rates of the Notes held by such holder and having similar ranking to the Notes, and satisfactory to the Required Holders. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note with the same effect as if such Successor Entity had been named as the Company herein. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions.

5. REDEMPTIONS AT THE COMPANY'S ELECTION.

(a) Company Optional Redemption. At any time after the Issuance Date, so long as no Event of Default has occurred or is continuing, the Company shall have the right to redeem all, or any portion, of the Outstanding Amount then remaining

under this Note (the "**Company Optional Redemption Amount**") on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The portion of this Note subject to redemption pursuant to this Section 5(a) shall be redeemed by the Company in cash at a price (the "**Company Optional Redemption Price**") equal to the sum of (A) such portion of the Principal to be redeemed, (B) accrued and unpaid Interest with respect to such portion of the Principal to be redeemed in such Company Optional Redemption and (C) accrued and unpaid Late Charges with respect to such Principal and Interest. The Company may exercise its right to require redemption under this Section 5(a) by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company may deliver no more than three (3) Company Optional Redemption Notices hereunder and such Company Optional Redemption Notices shall be irrevocable. Each Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**") which date shall not be less than five (5) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, (y) certify that no Event of Default has occurred or is continuing and (z) state the Company Optional Redemption Price of the Notes which is being redeemed in such Company Optional Redemption from the Holder and all of the other holders of the Notes pursuant to this Section 5(a) (and analogous provisions under the Other Notes) on the Company Optional Redemption Date (including, without limitation, the amount of Principal and, if any, Interest and/or, Late Charges, and any calculations with respect thereto). Notwithstanding anything herein to the contrary, (i) if no Event of Default has occurred as of the Company Optional Redemption Notice Date but an Event of Default occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect and (B) unless the Holder waives the Event of Default, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void and not counted towards the maximum allowable notices as provided above. In the event of the Company's redemption of any portion of this Note under this Section 5(a), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(a) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

(b) Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 5(a), then it must simultaneously take the same action with respect to all of the Other Notes.

6. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement) or its Bylaws (as defined in the Securities Purchase Agreement), or

through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out the provisions of this Note and take such actions as may be required to protect the rights of the Holder of this Note.

7. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. The Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Outstanding Amount of this Note, at the request of the Holder, and upon surrender of this Note to the Company by the Holder, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Outstanding Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Outstanding Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 12(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 7, if applicable) minus (2) the Principal portion of the Outstanding Amount submitted for redemption. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Outstanding Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section

3(c) or Section 4 (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

8. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law and as expressly provided in this Note.

9. COVENANTS. Until all of the Notes have been prepaid, redeemed or otherwise satisfied in accordance with their terms, except as may be approved in advance in writing, by the Required Holders:

(a) Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries (other than Permitted Senior Indebtedness and other Permitted Indebtedness secured by a Permitted Lien).

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "**Liens**") other than Permitted Liens.

(d) Restricted Payments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the Notes or Permitted Senior Indebtedness) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event

of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing or (iii) at any time the Company is (or is reasonably likely to become in any 91 day period, in the reasonable judgment of the Holder) Insolvent (as defined in the Securities Purchase Agreement).

(e) Restriction on Redemption and Cash Dividends. Except as permitted under Section 4(l) of the Securities Purchase Agreement, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or cash distribution on any of its capital stock.

(f) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, sub licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice or required by the terms of the Intercreditor Agreement, (ii) sales of inventory and product in the ordinary course of business, (iii) sales, leases, licenses, sub-licenses assignments, transfers, conveyances and other dispositions of assets or rights by the Company and its Subsidiaries that are not both material to and necessary for the Company's primary lines of business, or (iv) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of assets or rights by the Company and its Subsidiaries to joint ventures, *provided* that (x) with respect to any joint venture, other than the Equipment Financing JV (as defined in the Securities Purchase Agreement), the Company beneficially owns at least 50% of the equity interests in each such joint venture and (y) the fair market value of the assets or rights being conveyed to all such joint ventures (including the Equipment Financing JV) does not exceed, in the aggregate, $10,000,000; *provided*, *further that*, in the case of assets being conveyed, directly or indirectly, to the Equipment Financing JV or any of its direct or indirect subsidiaries or affiliates, such assets do not exceed in the aggregate $5,000,000.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the 91st calendar day after the Maturity Date (other than Permitted Purchase Money Indebtedness in an aggregate amount not to exceed $100,000 and capital leases consisting of Permitted Indebtedness in an aggregate amount not to exceed $100,000).

(h) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on

the Subscription Date or any business related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose in any manner that is adverse to the Holder.

(i) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the nature of the business conducted by it makes such qualification necessary, except in each case where the failure to be so qualified could not be reasonably expected to have a Material Adverse Effect.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or material to the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except in each case where the failure to maintain could not be reasonably expected to have a Material Adverse Effect.

(k) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company and/or any of its Subsidiaries that are necessary to the conduct of its business as now conducted, except in each case where the failure to maintain could not reasonably be expected to have a Material Adverse Effect.

(l) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with insurance companies or associations with recognized financial responsibility in such amounts and covering such risks, consistent with past practices, as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged.

(m) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof; (ii) transactions between the Company and/or any of its Subsidiaries, on the one hand, and the Company and/or any other Subsidiary, on the other hand; (iii) sales of equity interests of the Parent to Affiliates of the Parent and the

granting of registration and other customary rights in connection therewith, and (iv) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of the Company and/or such Subsidiary, as applicable; provided, that nothing in this Note shall in any way limit or restrict the Company's ability to provide services to the Equipment Financing JV and/or any of its subsidiaries, so long as such services are provided on arm's length terms and for fair value, as determined in the reasonable business judgment of the Company.

(n) Restricted Issuances. The Company shall not, directly or indirectly, issue (i) any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, and has provided notice to the Company of such belief, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours and upon reasonable notice, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

10. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change, waiver or amendment to this Note.

11. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 2(g) of the Securities Purchase Agreement.

12. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that following redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have a fourth exchange date, as indicated on the face of such new Note, which is the same as the

Fourth Exchange Date of this Note, (v) shall have a third exchange date, as indicated on the face of such new Note, which is the same as the Third Exchange Date of this Note, (vi) shall have a second exchange date, as indicated on the face of such new Note, which is the same as the Second Exchange Date of this Note, (vii) shall have a first exchange date, as indicated on the face of such new Note, which is the same as the First Exchange Date of this Note, (viii) shall have the same rights and conditions as this Note, and (ix) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

13. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF . The remedies provided in this Note and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, redemptions and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. Subject to applicable restrictions pertaining to confidentiality and applicable law, and executed of a customary non-disclosure agreement by the Holder, the Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

14. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note (excluding, for such purpose, any legal proceeding or action to the extent no payment default or other Event of Default has occurred hereunder) or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

15. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

16. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

17. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by

providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18.0%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

18. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

19. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

20. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, enforcement, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

21. JUDGMENT CURRENCY.

(a) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Note or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 21 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Note, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(i)the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii)the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 21(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 21(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Note.

22. SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

23. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

24. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(b) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(c) "**Bankruptcy Proceeding**" means, with respect to any Person, (i) the occurrence of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of such Person in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by such Person in furtherance of any such action or the taking of any action by any Person to commence a UCC foreclosure sale or any other similar action under federal, state or foreign law or (ii) the entry by a court of (A) a decree, order, judgment or other similar document in respect of such Person of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (B) a decree, order, judgment or other similar document adjudging such Person as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of such Person under any

applicable federal, state or foreign law or (C) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days.

(d) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(e) "**Change of Control**" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(f) "**Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Notes pursuant to the terms of the Securities Purchase Agreement.

(g) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X)(other than the Equipment Financing JV or one or more of the Equipment Financing JV's direct or indirect subsidiaries) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the

outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(h) "**GAAP**" means United States generally accepted accounting principles, consistently applied.

(i) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(j) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(k) "**Interest Date**" means, with respect to any given calendar month, the first Trading Day of such calendar month.

(l) "**Maturity Date**" shall mean April 29, 2021; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or an Event of Default Redemption Notice is delivered prior to the Maturity Date.

(m) "**Outstanding Amount**" means the sum of (A) the portion of the Principal to be redeemed or otherwise with respect to which this determination is being made, (B) accrued and unpaid Interest with respect to such Principal and (C) accrued and unpaid Late Charges with respect to such Principal and Interest.

(n) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market (as defined in the Securities Purchase Agreement), or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(o) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3 to the First Exchange Agreement, as in effect as of the First Exchange Date (including, without limitation, without any increase in principal, shortening of maturity date or other amendment, waiver or modification thereof adverse to the Holder in any respect), (iii) unsecured Indebtedness incurred by the Company that is made expressly subordinate in right of payment to the Indebtedness evidenced by this Note, both (x) as reflected in a written subordination and intercreditor agreement, by and among the holders of Notes and such Indebtedness, acceptable to the Holder and approved by the Holder in writing, and (y) which do not mature prior to the 91st calendar day after the Maturity Date, (iv) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens ("**Permitted Purchase Money Indebtedness**"); (v) Permitted Senior Indebtedness; (vi) any of the following Indebtedness, in an aggregate amount not to

exceed $4,750,000: (A) Indebtedness permitted under clause (d) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to "Permitted Intercompany Investments" (as defined therein as of the First Exchange Date); (B) Indebtedness permitted under clause (h) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to, among other things, cash management obligations and credit cards; (C) Indebtedness permitted under clause (j) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to the letters of credit issued in the ordinary course of business; and (D) Indebtedness permitted under clause (r) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to other unsecured Indebtedness; (vii) Indebtedness, in an aggregate amount not to exceed $3,000,000, permitted under subsection (l) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to previously existing Indebtedness of a Person whose assets or equity interests are acquired by the Company and/or any of its subsidiaries.

(p) "**Permitted Liens**" means (i) any Lien for taxes not yet overdue or delinquent or that is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law, (iii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens, landlords' liens, and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that (x) the Lien is confined solely to the equipment so acquired and improvements thereon, and (y) the proceeds of such equipment, in either case, with respect to Indebtedness in an aggregate amount not to exceed $3,000,000 and (z) the maturity date of such Indebtedness is at least ninety-one (91) calendar days after the Maturity Date, (v) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 3(a)(vi), (viii) pledges or deposits securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (ix) pledges or deposits securing bids, tenders, contracts (other than contracts for the payment of money) or leases made in the ordinary course of business; (x) deposits securing public or statutory obligations; (xi) deposits of money

securing, or in lieu of, surety, appeal or customs bonds in proceedings; (xii) zoning restrictions, easements, licenses, or other restrictions on the use of real property or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use, value, or marketability of such real estate; (xiii) Liens securing the Permitted Senior Indebtedness; (xiv) the California franchise tax Lien with respect to KIM International Corporation in the amount of $2,646.96; (xv) Liens on cash or cash equivalents securing reimbursement obligations under letters of credit permitted by clause (vi)(C) of the definition of Permitted Indebtedness in an aggregate amount not to exceed 105% of the amount of all such letters of credit outstanding at such time; (xvi) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed $250,000; (xvii) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement with respect to an acquisition; and (xviii) non-exclusive licenses of intellectual property rights in the ordinary course of business.

(q) "**Permitted Senior Indebtedness**" means principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable out-of-pocket costs, enforcement expenses (including reasonable out-of-pocket legal fees and disbursements), collateral protection expenses and other reimbursement or indemnity obligations relating thereto) payable by Company and/or its Subsidiaries under or in connection with (x) the PPP Loan (as defined in the Fourth Exchange Agreement) and (y) the Senior Secured Financing Agreement (including any refinancing or replacement thereof, collectively, the "**Current Facility**"); provided, however, that (i) the aggregate outstanding principal amount of the Current Facility shall not at any time exceed $35 million, (ii) the sum of outstanding principal and available borrowings under the Current Facility, in the aggregate, for any given time shall not exceed the sum of (A) 90% of the aggregate amount of all accounts receivable of the Company and its Subsidiaries then outstanding and (B) 90% of the value of inventory of the Company and its Subsidiaries as of such given time, in each case as determined in accordance with GAAP, consistently applied in accordance with past practices; (iii) margins applicable to the interest rates with respect to the Current Facility shall not be increased by more than 275 basis points from the interest rate margins as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date, except in connection with the imposition of a default rate of interest in accordance with the terms of Senior Secured Financing Agreement as of the First Exchange Date; (iv) the Unused Line Fee (as defined in the Senior Secured Financing Agreement as of the First Exchange Date) shall not be increased by more than 50 basis points in excess of the rate as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date; (v) recurring fees (including any loan servicing fee) with respect to the Current Facility shall not be increased by more than $150,000 in the aggregate for any year in excess of the amounts as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date (but excluding the Unused Line Fee (as defined in the Senior Secured Financing Agreement as of the First Exchange Date); (vi) any one-time amendment, consent or waiver fee shall not exceed $150,000 for any amendment or consent and, in the case of any waiver, $150,000 for each default or event of default being waived (and

any such fees, in the aggregate, together with any other fees pursuant to clause (v) above, shall not exceed $1,000,000 in any twelve calendar month period); (vii) no such Indebtedness is convertible or exchangeable, as applicable, into any securities of the Company or any of its Subsidiaries (and no securities of the Company or any of its Subsidiaries have been issued (or are required to be issued pursuant to any agreement) to any Person in connection therewith), except that the Company may, in its sole discretion, issue warrants to purchase any class or series of its capital stock in connection with the issuance of such Indebtedness provided that the Company concurrently issues warrants to the Holder on the same terms, and with the same proportion of aggregate exercise price of such warrants to the aggregate original principal amount, as provided in the Subsequent Placement; and (viii) the maturity date of the Current Facility shall not be prior to the 91st calendar day after the Maturity Date.

(r) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or and any Governmental Entity (as defined in the Securities Purchase Agreement) or any department or agency thereof.

(s) "**Prime Rate**" means the "prime rate" which from time to time published in the "Money Rates" column of *The Wall Street Journal* (Eastern Edition, New York Metro); provided, however, if the Money Rates column of *The Wall Street Journal* (Eastern Edition, New York Metro) ceases to be published or otherwise does not designate a "prime rate" as of a Business Day, Holder has the right to obtain such information from a similar business publication of its selection.

(t) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices and the Company Optional Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(u) "**Redemption Premium**" means 135%.

(v) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, and the Company Optional Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

(w) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(x) "**Senior Secured Financing Agreement**" means that certain Financing Agreement, dated August 21, 2019 (as amended, supplemented or otherwise modified from time to time), by and among the Company, each subsidiary of the Company party thereto, the lenders from time to time party hereto, Monroe Capital Management Advisors, LLC, a Delaware limited liability company ("**Monroe**"), as collateral agent for the Lenders, and Monroe, as administrative agent for the Lenders.

(y) **"Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(z) "**Subscription Date**" means April 30, 2019.

(aa) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

(ab) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(ac) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market (as defined in the Securities Purchase Agreement), or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

25. DISCLOSURE. At any time from and after the Issuance Date, upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed in a Current Report on Form 8-K or other periodic report filed pursuant to the 1934 Act, and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, Affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 25 shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Fourth Exchange Date set out above.

KUSHCO HOLDINGS, INC.

By: /s/ Nicholas Kovacevich
Name: Nicholas Kovacevich
Title: Chairman and Chief Executive Officer

FOURTH EXCHANGE AGREEMENT

This Fourth Exchange Agreement (the "**Agreement**") is entered into as of the 10th day of November, 2020, by and among KushCo Holdings, Inc., a Nevada corporation with offices located at 6261 Katella Avenue, Suite 250, Cypress, CA 90630 (the "**Company**") and the investor signatory hereto (the "**Holder**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that Securities Purchase Agreement, dated as of April 29, 2019, by and between the Company and the investors party thereto (as the same has been amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**Securities Purchase Agreement**"), the Company issued a senior note (as the same has been amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**Original Note**") to the Holder, as the initial holder.

B. Prior to the date hereof, pursuant to that certain Exchange Agreement, dated August 21, 2019 (the "**First Exchange Agreement**"), the Company exchanged the Original Note for a new senior note (the "**First Exchange Note**") and a warrant to purchase Common Stock of the Company (the "**Existing Warrant**").

C. Prior to the date hereof, pursuant to that certain Exchange Agreement, dated November 8, 2019 (the "**Second Exchange Agreement**"), the Company exchanged the First Exchange Note for a new senior note in the principal amount of $23,962,500 (the "**Second Exchange Note**").

D. Prior to the date hereof, pursuant to that certain Exchange Agreement, dated June 9, 2020 (the "**Third Exchange Agreement**"), the Company exchanged the Second Exchange Note for (i) a new senior note in the aggregate principal amount of $22.0 million (the "**Third Exchange Note**", and together with the Securities Purchase Agreement, the First Exchange Agreement, the Second Exchange Agreement, and the Third Exchange Agreement, the "**Existing Note Documents**") and (ii) 5,347,594 shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**").

E. Capitalized terms used but not otherwise defined herein shall have the meanings as set forth in the Third Exchange Agreement (as amended hereby) or, as the context may require, the Existing Note.

F. The Holder is the holder of the Existing Note issued under the Third Exchange Agreement and has not assigned, transferred or exchanged the Existing Note.

G. Prior to the date of the Agreement, KIM International Corporation, an Affiliate of the Company incurred a $1,900,000 unsecured, non-recourse "Paycheck Protection Program" loan from The Bennington State Bank under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (such loan, the "**PPP Loan**", and the date thereof, the "**PPP Loan Date**").

H. The Company and the Holder desire to amend and waive certain provisions of the Existing Note Documents and to permit the Transaction (as defined below) and to waive any prospective defaults or events of default that would have otherwise resulted

therefrom (the "**Prospective Defaults**") on the terms and subject to the conditions set forth herein. References herein to the "**Exchange**" or the "**Transaction**" shall mean the exchange of the Existing Note, for (x) a new senior note with an amount due at maturity as set forth on the signature page of the Holder attached hereto, in the form attached hereto as **Exhibit A** (the "**New Note**"), and (y) such aggregate number of shares of Common Stock as set forth on the signature page of the Holder attached hereto (the "**New Shares**", and together with the New Note, the "**New Securities**").

I. The New Securities and this Agreement and such other documents and certificates related thereto are collectively referred to herein as the "**Exchange Documents**".

J. The Exchange is being made in reliance upon the exemption from registration provided by Section 4(a)(2) and Rule 144(d)(3)(ii) of the Securities Act of 1933, as amended (the "**Securities Act**").

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. **Exchange**. On the Closing Date (as defined below), subject to the terms and conditions of this Agreement, pursuant to Section 4(a)(2) and Rule 144(d)(3)(ii) of the Securities Act, the Holder shall convey, assign and transfer the Existing Note to the Company in exchange for which the Company shall (a) issue the New Note to the Holder and (b) issue the New Shares to the Holder by deposit/withdrawal at custodian in accordance with the DWAC instructions on the signature page of the Holder, which New Shares shall be issued without restricted legend and shall be freely tradable by the Holder. On the Closing Date, the Company shall deliver or cause to be delivered to the Holder (or its designee) the New Note at the address for delivery set forth on the signature page of the Holder attached hereto. Immediately following the delivery of the New Securities to the Holder (or its designee), the Holder shall relinquish all rights, title and interest in the Existing Note (including any claims the Holder may have against the Company related thereto) and assign the same to the Company, and the Existing Note shall be deemed canceled.

2. **Ratifications; Incorporation of Terms under Transaction Documents**.

2.2 Ratifications. Except as otherwise expressly provided herein, the Securities Purchase Agreement and each other Transaction Document, is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof: (i) all references in the Securities Purchase Agreement to "this Agreement", "hereto", "hereof", "hereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement, and (ii) all references in the other Transaction Documents to the "Securities Purchase Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement.

2.2 Amendments and Incorporation of Terms under Transaction Documents. Effective as of the date hereof, the Securities Purchase Agreement and each of the other Transaction Documents are hereby amended as follows (and any such agreements, covenants and

related provisions therein shall be deemed incorporated by reference herein, *mutatis mutandis*, as amended as such):

(a) The defined term "Notes" is hereby amended to mean the New Note (as defined herein).

(b) The defined term "Transaction Documents" is hereby amended to include this Agreement and the other Exchange Documents.

(c) The defined term "Business Day" is hereby amended and restated as the Business Day (as defined in the New Note).

2.3 Amendment of First Exchange Agreement; Acknowledgement. Effective as of the Closing Date, Section 17 of the First Exchange Agreement is hereby amended to replace "New Note" with New Note (as defined herein). The Company hereby acknowledges and agrees that, after giving effect to the foregoing amendment, the MFN Termination Date (as defined in the First Exchange Agreement) shall not occur until such dates as no New Note (as defined herein) remains outstanding.

3. **Limited Waiver**. The Holder hereby waives the Prospective Defaults and any and all restrictions and remedies set forth in any Existing Note Document that would otherwise prohibit the Transaction or any other transactions contemplated by the Exchange Documents (as defined herein), solely as necessary to permit the transactions contemplated in the Exchange Documents (as defined herein) and not with respect to any other matter. Effective as of the time immediately prior to the PPP Loan Date, the Holder waives any prohibitions in the Transaction Documents that would otherwise prohibit the PPP Loan and any Prospective Defaults (and, for the avoidance of doubt, the PPP Loan shall on and after the PPP Loan Date be deemed to be "Permitted Senior Indebtedness" thereunder).

4. **Company Representations and Warranties.** As of the date hereof and as of the Closing Date (as defined below):

4.1 Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement (including, for the avoidance of doubt, the New Notes), "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole; *provided*, *however*, that solely for purposes of this clause (i), COVID-19, the declaration on March 13, 2020, of the national emergency relating to COVID-19 and related executive actions, legislative and regulatory measures, and the related impacts of the

foregoing on the Company and its Subsidiaries shall not constitute a material adverse effect on the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Exchange Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Exchange Documents. Other than the Persons set forth on Schedule 4.1, the Company has no Subsidiaries.

4.2 Authorization and Binding Obligation. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the New Securities and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by the Exchange Documents and to consummate the Transaction (including, without limitation, the issuance of the New Securities in accordance with the terms hereof and thereof). As of the Closing Date, the execution and delivery of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the New Securities will have been duly authorized by the Company's Board of Directors (or a duly authorized committee thereof) and no further filing, consent, or authorization will be required by the Company, its Board of Directors or its shareholders (other than such filings as may be required by any federal or state securities laws, rules or regulations). This Agreement has been and, as of the Closing Date, the other Exchange Documents to which the Company is a party will have been, duly executed and delivered by the Company, and constitute or will constitute, as applicable, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

4.3 No Conflict. Except for any waivers referred to in Section 3 above, the execution, delivery and performance of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the New Securities) will not (i) result in a violation of the Articles of Incorporation (as defined below) or any other organizational documents of the Company or any of its Subsidiaries, any capital stock of the Company or any of its Subsidiaries or Bylaws (as defined below) of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party and the receipt by the Company of the Required Consents (as defined below), or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and the rules and regulations of the OTCQX (the **"Principal Market**") and including all applicable federal laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected except, in the case of clause

(ii) or (iii) above, to the extent such violations that would not reasonably be expected to have a Material Adverse Effect.

4.4 No Consents. Except as set forth on Schedule 4.4 (the "**Required Consents**"), neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than such filings as may be required by any federal or state securities laws, rules or regulations), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Exchange Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Exchange Documents.

4.5 Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the New Securities is exempt from registration under the Securities Act pursuant to the exemption provided by Section 4(a)(2) and Rule 144(d)(3)(ii) thereof.

4.6 Status of Existing Note; Issuance of New Securities.

(a) The Company has no knowledge that the Existing Note is subject to dispute and to the knowledge of the Company there is no action based on the Existing Note that is currently pending in any court or other legal venue and to the knowledge of the Company no judgments based upon the Existing Note have been previously entered in any legal proceeding. The Company has not received any written notice from the Holder or any other person challenging or disputing the Existing Note, or any portion thereof, and prior to the Exchange, the Company is unconditionally obligated to pay the entire aggregate principal amount outstanding under the Existing Note (and any accrued and unpaid interest thereunder) without defense, counterclaim or offset. Upon the Exchange, the Company is unconditionally obligated to pay the entire aggregate principal amount outstanding under the New Note (and any accrued and unpaid interest thereunder) without defense, counterclaim or offset.

(b) As of the Closing Date, (i) the issuance of the New Note will be duly authorized and upon issuance in accordance with the terms of the Exchange Documents shall be validly issued, fully paid and non-assessable and free from all Liens (as defined in the New Note) and (ii) upon issuance in accordance herewith, the New Shares will be validly issued, fully paid and nonassessable and free from all Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. By virtue of Section 4(a)(2) and Rule 144(d)(3)(ii) under the Securities Act, the New Securities will have a Rule 144 (as defined below) holding period that will be deemed to have commenced as of the Closing Date (as defined in the Securities Purchase Agreement), the date of the original issuance of the Original Note to the Holder. At any time on and after the date hereof and subject to the Holder's representations and warranties contained in Section 5 of this Agreement, neither the New Note nor the New Shares shall be required to bear any restrictive legend and shall be freely

transferable by the Holder pursuant to and in accordance with Rule 144 of the Securities Act ("**Rule 144**"), provided, for the avoidance of doubt, that the Holder shall not be an affiliate of the Company and shall not have been an affiliate during the 90 days preceding the date of any transfer.

4.7 Transfer Taxes. On the Closing Date, all share transfer or other taxes (other than income or similar taxes) that are required to be paid in connection with the issuance of the New Note to be issued to the Holder hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

4.8 Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in material violation of any term of or in default under its Articles of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Articles of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in material violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in the SEC Documents, the Company is not in material violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. Except as set forth in SEC Documents, during the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the Securities and Exchange Commission ("**SEC**") or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

4.9 Transactions With Affiliates . Except as set forth in the SEC Documents or as set forth on Schedule 4.9, none of the officers or directors of the Company or its Subsidiaries and, to the knowledge of the Company, none of the employees of the Company or its Subsidiaries is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors) required to be disclosed under Item 404 of Regulation S-K under the Exchange Act.

4.10 Equity Capitalization.

(a) Definitions:

i. "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

ii. "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designations and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

b. Authorized and Outstanding Capital Stock. As of the date hereof, the authorized capital stock of the Company consists of (A) 265,000,000 shares of Common Stock, of which 127,274,667 are issued and outstanding and 36,736,880 shares are reserved for issuance pursuant to Convertible Securities (as defined below) exercisable or exchangeable for, or convertible into, shares of Common Stock and (B) 10,000,000 shares of Preferred Stock, none of which are issued and outstanding. No shares of Common Stock are held in the treasury of the Company.

c. Valid Issuance; Available Shares; Affiliates. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued, fully paid and nonassessable. The SEC Documents accurately set forth, as of the dates referred to therein, the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (as defined below) and (B) that are, as of the date referred to therein, owned by Persons who are "affiliates" (as defined in Rule 405 of the Securities Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

d. Existing Securities; Obligations. Except as disclosed in the SEC Documents or on Schedule 4.10: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (F) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the New Note.

e. Organizational Documents. True, correct and complete copies of the Company's Articles of Incorporation, as amended and as in effect on the date hereof (the "**Articles of Incorporation**"), and the Company's Bylaws, as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto, are set forth in, or filed as exhibits to, the SEC Documents, or otherwise set forth on Schedule 4.10.

4.11 Indebtedness and Other Contracts. Except as disclosed in the SEC Documents or on Schedule 4.11, neither the Company nor any of its Subsidiaries, (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument would reasonably be expected to result in a Material Adverse Effect, (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect (other than the Notes and the Securities Purchase Agreement), or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Prior to the date hereof, the Company has repaid, in full, all of the outstanding obligations under the Current Facility (as defined in the Original Note) and no outstanding disputes exist between the lenders under the Current Facility and the Company or any of its Subsidiaries.

4.12 Litigation. Except as set forth in the SEC Documents, there is no action, claim, suit, investigation or proceeding before any Governmental Entity pending or, to the knowledge of the Company, threatened against the Company or its Subsidiaries wherein an unfavorable decision, ruling or finding would reasonably be expected to, individually or in the aggregate, (i) materially adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, the Exchange Documents or (ii) have a Material Adverse Effect. The Company is not a party to or subject to the provisions of any injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental agency or body that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.13 No Consideration Paid. No consideration, commission or other remuneration has been paid by the Holder to the Company, its Subsidiaries or any of their agents or affiliates in connection with the Exchange.

4.14 Acknowledgement Regarding Holder's Trading Activity . It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Exchange Documents, in accordance with the terms thereof, the Holder has not been asked by the Company or any of its Subsidiaries to agree, nor has the Holder agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the New Securities for any specified term; (ii) the Holder, and counterparties in "derivative" transactions to which any the Holder is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to the Holder's knowledge of the transactions contemplated by the Exchange Documents; (iii) the Holder shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) the Holder may rely on the Company's obligation to timely deliver New Shares as and when required pursuant to the Exchange Documents for purposes of effecting trading in the Common Stock of the Company. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the New Note or any other Exchange Document or any of the documents executed in connection herewith or therewith.

4.15 Disclosure. Except as disclosed in the SEC Filing (as defined below), the Company confirms that neither it nor any other Person acting on its behalf has provided the Holder or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Exchange Documents and any matters disclosed in the SEC Filing. A draft of the Annual Report on Form 10-K for the period ended August 31, 2020 of Company and its Subsidiaries provided by the Company to the Holder (or an affiliate of the Holder) on November 9, 2020 is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in securities of the Company.

5. **Holder's Representations and Warranties**. As a material inducement to the Company to enter into this Agreement and consummate the Exchange, the Holder hereby represents and warrants with and to the Company, as of the date hereof and as of the Closing Date, as follows:

5.1 Reliance on Exemptions. The Holder understands that the New Securities are being offered and exchanged in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Holder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein and in the other Exchange Documents in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the New Securities.

5.2 No Governmental Review. The Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the New Securities or the fairness or suitability of the investment in the New Securities nor have such authorities passed upon or endorsed the merits of the offering of the New Securities.

5.3 Validity; Enforcement. This Agreement and the other Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

5.4 No Conflicts. The execution, delivery and performance by the Holder of this Agreement and the other Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

5.5 Investment Risk; Sophistication. The Holder is acquiring the New Securities hereunder as principal for its own account and in the ordinary course of its business. The Holder has such knowledge, sophistication, and experience in business and financial matters so as to be capable of evaluation of the merits and risks of the prospective investment in the New Securities, and has so evaluated the merits and risk of such investment, and can bear the economic risks of such investment. The Holder is an "accredited investor" as defined in Regulation D under the Securities Act. The Holder understands that no federal or state agency

has passed upon the merits or risks of an investment in the New Securities or made any finding or determination concerning the fairness or advisability of this investment.

5.6 Ownership of Existing Note. The Holder owns the Existing Note free and clear of any Liens (other than the obligations pursuant to this Agreement, the Transaction Documents and applicable securities laws) and has the requisite power and authority to enter into and perform its obligations under this Agreement and each of the other Exchange Documents to which it is a party and to consummate the Transaction.

5.7 Transfer or Resale. The Holder understands that: (i) the New Securities have not been and is not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Holder shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such New Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Holder provides the Company with reasonable assurance that such New Securities can be sold, assigned or transferred pursuant to Rule 144; (ii) any sale of the New Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the New Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the New Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the New Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the New Securities and such pledge of New Securities shall not be deemed to be a transfer, sale or assignment of the New Securities hereunder, and the Holder effecting a pledge of New Securities shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Exchange Document, including, without limitation, this Section 5.7.

6. **Closing; Conditions**. Subject to the conditions set forth below, the Exchange shall take place at the offices of Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178, on the Business Day immediately following such date as the Company shall have satisfied all conditions to closing below, or at such other time and place as the Company and the Holder mutually agree (the "**Closing**" and the "**Closing Date**").

6.1 Condition's to Holder's Obligations. The obligation of the Holder to consummate the Exchange is subject to the fulfillment, to the Holder's reasonable satisfaction, prior to or at the Closing, of each of the following conditions (unless waived by the Holder in writing, prior to the Closing):

a. Representations and Warranties; Covenants. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality

or Material Adverse Effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) as of such specified date). The Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

b. Issuance of New Note. At the Closing, the Company shall issue the New Note to the Holder.

c. No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

d. Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Holder, and the Holder shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request.

e. No Event of Default. After giving effect to the Exchange, no Event of Default (as defined in the New Note) or event that with the passage of time or giving of notice would constitute an Event of Default shall have occurred and be continuing.

f. Consents. The Company shall have obtained all governmental, regulatory or third party consents and approvals (or waiver of such consents or approvals), if any, necessary for the Exchange, including without limitation, those required by the Principal Market, if any, and the Required Consents.

g. Listing. The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market.

h. Fees. The Company shall have paid, in full, to Kelley Drye & Warren LLP the Counsel Expense Amount (as defined below) and all outstanding invoices delivered by Kelley Drye & Warren LLP to the Company prior to the date hereof.

6. Condition's to the Company's Obligations . The obligation of the Company to consummate the Exchange is subject to the fulfillment, to the Company's reasonable satisfaction, prior to or at the Closing, of each of the following conditions (unless waived by the Company in writing, prior to the Closing):

a. Representations and Warranties. The representations and warranties of the Holder contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or

material adverse effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which are accurate in all respects) as of such specified date).

b. No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

c. Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

7. **Covenants**.

7.1 No Integration. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf shall, directly or indirectly, make any offers or sales of any security (as defined in the Securities Act) or solicit any offers to buy any security or take any other actions, under circumstances that would require registration of the New Note under the Securities Act or cause this offering of the New Note to be integrated with such offering or any prior offerings by the Company for purposes of Regulation D under the Securities Act.

7.2 Fees. At the closing, the Company shall pay Kelley Drye & Warren, LLP (counsel to the Holder) an amount of up to $5,000 for the reasonable and documented out-of-pocket legal fees and expenses incurred by the Holder in connection with the Transaction (the "**Counsel Expense Amount**"). The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, any legal fees with respect to the issuance of any New Shares without restrictive legend, DTC (as defined below) fees or broker's commissions (in each case other than for Persons engaged by the Holder) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold the Holder harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Exchange Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the New Securities to the Holder.

7.3 Holding Period. For the purposes of Rule 144, the Company acknowledges that the holding period of the New Securities may be tacked onto both the holding period of the Existing Note, the holding period of the First Exchange Note and the holding period of the Original Note, and the Company agrees not to take a position contrary to this Section 7.3. The Company acknowledges and agrees that, subject to the Holder's representations

and warranties contained in Section 5 of this Agreement, the New Securities shall not be required to bear any restrictive legend and shall be freely transferable by the Holder pursuant to and in accordance with Rule 144, provided, for the avoidance of doubt, that the Holder shall not be an affiliate of the Company and shall not have been an affiliate during the 90 days preceding the date of any transfer.

7.4 Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the New Securities for sale to the Holder at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), if any. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the New Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the New Securities to the Holder.

7.5 Reporting Status. Until the date no New Notes remain outstanding (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

7.6 Financial Information. The Company agrees to send the following to any holder of the New Note (each, an "**Investor**") during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, stockholders' equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

7.7 Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the New Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all New Shares from time to time issuable under the terms of the Exchange Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the Principal Market, The New

York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 7.7.

7.8 Pledge of Securities. Notwithstanding anything to the contrary contained in the Existing Note Documents nor the Exchange Documents, the Company acknowledges and agrees that the New Securities may be pledged by a holder of the New Securities without restriction in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the New Securities. The Company hereby agrees to execute and deliver such documentation as a pledgee of the New Securities may reasonably request in connection with a pledge of the New Securities to such pledgee by the Holder, provided that such documentation does not expand the nature of the Company's obligations under any of the Existing Note Documents and the Exchange Documents.

7.9 Disclosure of Transaction.

a. On or before 9:30 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, the Company shall file a Current Report on Form 8-K or any other periodic report filed pursuant to the Exchange Act (including all attachments, the "**SEC Filing**") describing the material terms of the transactions contemplated by the Exchange Documents in the form required by the Exchange Act and attaching this Agreement and the form of the New Note. From and after the filing of the SEC Filing, the Company shall have disclosed all material, non-public information (if any) provided to the Holder by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Exchange Documents. In addition, effective upon the filing of the SEC Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Holder or any of its affiliates, on the other hand, relating to the transactions contemplated by the Exchange Documents, shall terminate.

b. Except as may be required by the Securities Purchase Agreement or the New Note, the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide the Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of the Holder (which may be granted or withheld in the Holder's sole discretion). To the extent that the Company delivers any material, non-public information to the Holder without the Holder's consent, other than as required by the Securities Purchase Agreement or the New Note, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality with respect to such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor the Holder shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of the Holder, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-

K Filing and (ii) as is required by applicable law and regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that the Holder shall not have (unless expressly agreed to by the Holder after the date hereof in a written definitive and binding agreement executed by the Company and the Holder), any duty of confidentiality with respect to any material, non-public information regarding the Company or any of its Subsidiaries.

7.10 Additional Issuance of Securities. The Company agrees that for the period commencing on the date hereof and ending on the date immediately following the 30th Trading Days after the Closing Date (the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), any Convertible Securities (as defined below), any preferred stock or any purchase rights) (any such issuance, offer, sale, grant, disposition or announcement (whether occurring during the Restricted Period or at any time thereafter) is referred to as a "**Subsequent Placement**"). Notwithstanding the foregoing, this Section 7.10 shall not apply in respect of the issuance of (i) shares of Common Stock, restricted shares of Common Stock, restricted stock units or standard stock options to purchase Common Stock or other standard equity linked securities to directors, officers or employees of the Company in their capacity as such pursuant to an Approved Stock Plan (as defined below), provided that (1) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options or vesting of restricted stock or restricted stock units or other equity linked securities) after the date hereof pursuant to this clause (i) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the date hereof and (2) the exercise price of any stock options is not lowered, none of such stock options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such stock options are otherwise materially changed in any manner that adversely affects the Holder; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the date hereof, provided that the conversion, exercise or other method of issuance (as the case may be) of any such Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard stock options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities (other than standard stock options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects the Holder; or (iii) the New Securities (each of the foregoing in clauses (i) through (iii), collectively the "**Excluded Securities**"). "**Approved Stock Plan**" means any employee benefit plan which has been

approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock, restricted stock, restricted stock units, standard options to purchase Common Stock and other standard equity linked securities may be issued to any employee, officer or director for services provided to the Company in their capacity as such. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

7.11 Additional Registration Statements. At any time during the Restricted Period, the Company shall not file a registration statement or an offering statement under the Securities Act (other than a registration statement on Form S-8 or such supplements or amendments to registration statements that are outstanding and have been declared effective by the SEC as of the date hereof (solely to the extent necessary to keep such registration statements effective and available and not with respect to any Subsequent Placement)).

7.12 Notices to Holder. All notices to Holder pursuant to the Exchange Documents shall be delivered in accordance with the notice instructions set forth on the signature page of the Holder attached hereto (or such other instructions delivered in writing to the Company by the Holder from time to time).

8. **Termination**. If the Transaction is not consummated on or prior to the fifth (5^{th}) Business Day after the date hereof, the Holder may terminate this Agreement by written notice to the Company and this Agreement shall thereafter be null and void, *ab initio*.

9. **Miscellaneous Provisions.** Section 9 of the Securities Purchase Agreement (as amended hereby) is hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date first set forth on the first page of this Agreement.

COMPANY:

KUSHCO HOLDINGS, INC.

By: /s/ Nicholas Kovacevich
Name: Nicholas Kovacevich
Title: Chairman and Chief Executive Officer

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date first set forth on the first page of this Agreement.

Amounts Due on the Maturity Date under Existing Note:

$22,000,000

Principal Amount of New Note:

$19,000,000

Aggregate Number of New Shares:

4,687,500

HOLDER:

HB SUB FUND II LLC

By:__

Name: George Antonopoulos
Title: Authorized Secretary
Hudson Bay Capital Management LP not individually, but solely as Investment Advisor to HB Sub Fund II LLC

Address for Notices:
Please deliver any notices other than Pre-Notices to:

c/o Hudson Bay Capital Management LP
777 Third Avenue, 30th Floor
New York, NY 10017
Attention: Yoav Roth
Facsimile: (212) 571-1279
E-mail: investments@hudsonbaycapital.com
Residence: Cayman Islands

Please deliver any Pre-Notice to:

c/o Hudson Bay Capital Management LP
777 Third Ave., 30th Floor
New York, NY 10017
Facsimile: (646) 214-7946
Attention: Scott Black
General Counsel and Chief Compliance Officer

with a copy (for information purposes only) to:

Kelley Drye & Warren LLP

101 Park Avenue
New York, NY 10178
Telephone: 212-808-7540
Facsimile: (212) 808-7897
Attention: Michael Adelstein, Esq.
Email: madelstein@kelleydrye.com

SCHEDULES TO EXCHANGE AGREEMENT

SCHEDULE 4.1

Subsidiaries

Entity Name	*Jurisdiction of Organization*	*Authorized Interests*	*Outstanding Interests*
Kush Energy, LLC	Colorado	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
Kush Supply Co. LLC	Nevada	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
Zack Darling Creative Associates, LLC	California	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
The Hybrid Creative LLC	California	Membership interests	100% of membership interests held by Zack Darling Creative Associates, LLC
Koleto Innovations LLC	Nevada	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
KIM International Corporation	California	10,000,000 shares of a single class of stock, no par value specified	10,000 shares of stock (all held by KushCo Holdings, Inc.)
KCH Distribution Inc.	British Columbia	1 common share	1 share of common stock (all held by KushCo Holdings, Inc.).

SCHEDULE 4.4

Required Consents

None

SCHEDULE 4.9

Transactions with Affiliates

The Company and its subsidiaries provide customary compensation for the benefit of present and/or former directors, officers, and employees (including bonuses and stock option programs), as well as customary benefits and indemnification arrangements.

SCHEDULE 4.10

Equity Capitalization

Preemptive Rights

- Pursuant to the "Purchase Rights" set forth in Section 4(a) of the Existing Warrant, Holder is entitled to receive, on an as-converted basis, options, convertible securities, and rights to purchase stock, warrants, securities or other property that are otherwise issued to the record holders of any class of Common Stock of the Company on a *pro rata* basis

- Pursuant to the "Purchase Rights" set forth in Section 4(a) of those certain Warrants to Purchase Common Stock dated as of the date hereof and issued by the Company to certain affiliates and related funds of Monroe Capital Management Advisors, LLC (the "**Specified Warrants**"), the holder thereof is entitled to receive, on an as-converted basis, options, convertible securities, and rights to purchase stock, warrants, securities or other property that are otherwise issued to the record holders of any class of Common Stock of the Company on a *pro rata* basis
- Pursuant to the Securities Purchase Agreement, Holder is entitled to participation rights for any "Subsequent Placement" (as defined therein) under specified circumstances
- Pursuant to the New Note, the Holder has the right to receive warrants under specified circumstances under the definition of "Permitted Senior Indebtedness" (as defined therein)

Convertible or Exchangeable Securities

- Outstanding options to purchase 12,662,000 shares of common stock of KushCo Holdings, Inc.
- Outstanding warrants (excluding the Existing Warrant and the Specified Warrants (defined above) copies of which have been provided to Holder) to purchase 6,988,000 shares of common stock of KushCo Holdings, Inc.

SCHEDULE 4.11

Other Indebtedness

- Indebtedness incurred pursuant to the "Senior Secured Financing Agreement" (as defined in the New Note)
- The Existing Note
- The PPP Loan

Exhibit 21.1

Subsidiaries of the Registrant

Entity Name	State/Territory of Organization
Kush Energy, LLC	Colorado
Kush Supply Co. LLC	Nevada
Zack Darling Creative Associates, LLC	California
The Hybrid Creative LLC	California
Koleto Innovations LLC	Nevada
KIM International Corporation	California
KCH Distribution Inc.	British Columbia

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement of KushCo Holdings, Inc. on Form S-3 (File No. 333-231019 and 333-233829) and Form S-8 (File No. 333-209439, 333-229023, and 333-231020) of our report dated November 10, 2020, with respect to our audits of the consolidated financial statements of KushCo Holdings, Inc. as of August 31, 2020 and 2019 and for the years ended August 31, 2020 and 2019, which report is included in this Annual Report on Form 10-K of KushCo Holdings, Inc. for the year ended August 31, 2020.

Our report on the consolidated financial statements refers to a change in the method of accounting for leases, due to the adoption of ASU No. 2016-02, Leases (Topic 842), as amended, effective September 1, 2019, using the modified retrospective approach.

/s/ Marcum LLP

Marcum LLP
Costa Mesa, CA
November 10, 2020

Exhibit 31.1

Certification of Principal Executive Officer Required by
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Nicholas Kovacevich, certify that:

1. I have reviewed this Annual Report on Form 10-K of KushCo Holdings, 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: November 10, 2020

/s/ Nicholas Kovacevich

Nicholas Kovacevich
Chairman and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

Certification of Principal Financial Officer Required by
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Stephen Christoffersen, certify that:

1. I have reviewed this Annual Report on Form 10-K of KushCo Holdings, 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: November 10, 2020

/s/ Stephen Christoffersen

Stephen Christoffersen
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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

The undersigned officer of KushCo Holdings, Inc. (the "Company") hereby certifies to his knowledge that the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2020 (the "Report") to which this certification is being furnished as an exhibit, as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company. This certification is provided solely pursuant to 18 U.S.C. Section 1350 and Item 601(b)(32) of Regulation S-K ("Item 601(b)(32)") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act. In accordance with clause (ii) of Item 601(b)(32), this certification (A) shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and (B) shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Date: November 10, 2020

/s/ Nicholas Kovacevich

Nicholas Kovacevich
Chairman and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

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

The undersigned officer of KushCo Holdings, Inc. (the "Company") hereby certifies to his knowledge that the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2020 (the "Report") to which this certification is being furnished as an exhibit, as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company. This certification is provided solely pursuant to 18 U.S.C. Section 1350 and Item 601(b)(32) of Regulation S-K ("Item 601(b)(32)") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act. In accordance with clause (ii) of Item 601(b)(32), this certification (A) shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and (B) shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Date: November 10, 2020

/s/ Stephen Christoffersen

Stephen Christoffersen
Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.