

REFINITIV

DELTA REPORT

10-Q

BV - BRIGHTVIEW HOLDINGS, INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - DECEMBER 31, 2023

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TOTAL DELTAS 4275

█ **CHANGES** 237

█ **DELETIONS** 2428

█ **ADDITIONS** 1610

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended ~~December~~ March 31, 2023 ~~2024~~

OR

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

For the transition period from to

Commission File Number: 001-38579

BrightView Holdings, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware

46-4190788

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer

Identification No.)

980 Jolly Road
Blue Bell, Pennsylvania
(Address of principal executive offices)

19422

(Zip Code)

Registrant's telephone number, including area code: (484) 567-7204

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

Title of Each Class	Trading Symbol	Name of exchange on which registered
Common Stock, Par Value \$0.01 Per Share	BV	New York Stock Exchange

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The number of shares of Registrant's Common Stock outstanding as of **January 31, 2024** **April 30, 2024** was **94,400,000** **94,500,000**.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this "Form 10-Q") contains "forward-looking statements" within the meaning of the safe harbor provision of the U.S. Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which are subject to the "safe harbor" created by those sections. All statements, other than statements of historical facts included in this Form 10-Q, including statements concerning our plans, objectives, goals, beliefs, business **strategies, outlook, business trends, expectations regarding our industry, strategy, future events, business conditions, results of future operations, future liquidity and financial position, business outlook, business trends future revenues, project costs, prospects, plans and objectives of management** and other information, may be forward-looking statements.

Words such as "outlook," "guidance," "projects," "believes," "expects," "may," "will," "should," "seeks," "intends," "plans," "estimates," "continues," or "anticipates," and variations of such words or similar expressions are intended to identify forward-looking statements. The forward-looking statements are not historical facts, or guarantees of future performance and are based upon our current expectations, beliefs, estimates and projections, and various assumptions, many of which, by their nature, are inherently uncertain and beyond our control. Our expectations, beliefs, and projections are expressed in good faith, and we believe there is a reasonable basis for them. However, there can be no assurance that management's expectations, beliefs and projections will result or be achieved, and actual results may vary materially from what is expressed in or indicated by the forward-looking statements.

There are a number of risks, uncertainties and other important factors, many of which are beyond our control, that could cause our actual results to differ materially from the forward-looking statements contained in this Form 10-Q. Such risks, uncertainties and other important factors that could cause actual results to differ include, among others, the risks, uncertainties and factors set forth under the headings **Business**, "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" **in our filings with the U.S. Securities and Exchange Commission** and elsewhere in this Form 10-Q. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Some of the key factors that could cause actual results to differ from our expectations include risks related to:

- general business, **economic, and financial market and economic** conditions;
- increases in raw material costs, fuel prices, wages and other operating costs, and changes in our ability to source adequate supplies and materials in a timely manner;
- competitive industry pressures;
- the failure to retain current customers, renew existing customer contracts and obtain new customer contracts;
- the failure to enter into profitable contracts, or maintaining customer contracts that are unprofitable;
- a determination by customers to reduce their outsourcing or use of preferred vendors;
- the dispersed nature of our operating structure;
- our ability to implement our business strategies and achieve our growth objectives;
- the possibility that the anticipated benefits from our business acquisitions will not be realized in full or at all or may take longer to realize than expected;
- the possibility that costs or difficulties related to the integration of acquired businesses' operations will be greater than expected and the possibility that integration efforts will disrupt our business and strain management time and resources;
- the **potential impact on our revenues and profitability caused by any disposition of assets or discontinuation of business lines;**
- the seasonal nature of our landscape maintenance services;
- our dependence on weather conditions and the impact of severe weather and climate change on our business;
- disruptions in our supply chain and changes in our ability to source adequate supplies and materials in a timely manner;
- any failure to accurately estimate the overall risk, requirements, or costs when we bid on or negotiate contracts that are ultimately awarded to us;
- the conditions and periodic fluctuations of real estate markets, including residential and commercial construction;
- the level, timing and location of snowfall;

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- our ability to retain or hire our executive management and other key **personnel**; personnel, and particularly reflecting competition for talent in light of non-compete **rulemaking and legislation**;
- our ability to attract and retain field and hourly employees, trained workers, and third-party contractors and **re-employ** seasonal workers;
- any failure to properly verify employment eligibility of our employees;

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- subcontractors taking actions that harm our business;
- our recognition of future impairment charges;
- laws and governmental regulations, including those relating to employees, wage and hour, immigration, human health, safety, transportation and safety and transportation; the associated financial impact of such regulations;
- environmental, health and safety laws and regulations, including regulatory costs, claims and litigation related to the use of chemicals and pesticides by employees and related third-party claims;
- the distraction and impact caused by litigation, of adverse litigation judgments and settlements resulting from legal proceedings;
- tax increases and changes in tax rules;
- increase in on-job accidents involving employees;
- any failure, inadequacy, interruption, security failure or breach of our information technology systems;
- compliance with data privacy regulations; requirements;
- our ability to adequately protect our intellectual property;
- restrictions imposed by our substantial indebtedness; debt agreements that limit our flexibility in operating our business;
- increases in interest rates governing our variable rate indebtedness increasing the cost of servicing our substantial indebtedness;
- risks related to counterparty credit worthiness or non-performance of the derivative financial instruments we utilize;
- restrictions imposed by our debt agreements that limit our flexibility in operating our business;
- our ability to generate sufficient cash flow to satisfy our significant debt service obligations;
- our ability to obtain additional financing to fund future working capital, capital expenditures, investments or acquisitions, or other general corporate requirements;
- risks related to counterparty credit worthiness or non-performance of the derivative financial instruments we utilize;
- any future sales, or the perception of future sales, by us or our affiliates, which could cause the market price for our common stock to decline;
- the ability of KKR BrightView Aggregator L.P., Birch-OR Equity Holdings, LLC and Birch Equity Holdings, LP, which collectively hold approximately 71% 70.5% of our shares as of December 31, 2023 March 31, 2024, to exert significant influence over us;
- the fact that the holders of our Series A Preferred Stock may have different interests from and vote their shares in a manner deemed adverse to, holders of our common stock;
- the dividend, liquidation, and redemption rights of the holders of our Series A Preferred Stock;
- occurrence of natural disasters, terrorist attacks, or other external events;
- occurrence of a pandemic, epidemic or other public health emergency;
- heightened inflation, geopolitical conflicts, recession, financial market disruptions and other economic conditions;
- our ability to meet pursue and achieve our environmental, social and corporate governance ("ESG") goals and targets and the possibility that complying with ESG such standards and meeting our goals may be significantly more costly than anticipated; and
- costs and requirements imposed as a result of maintaining compliance with the requirements of being a public company.

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We caution you that the risks, uncertainties, and other factors referenced above may not contain all of the risks, uncertainties and other factors that are important to you. In addition, we cannot assure you that we will realize the results, benefits, or developments that we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our business in the way expected. We undertake no obligation to publicly update or revise any forward-looking statements to reflect subsequent events or circumstances, any change in assumptions, beliefs or expectations or any change in circumstances upon which any such forward-looking statements are based, except as required by law.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

BrightView Holdings, Inc.
Consolidated Balance Sheets
(Unaudited)
(In millions, except par value and share data)

	December 31,		September 30,	
	2023		2023	
Assets				
Current assets:				
Cash and cash equivalents	\$	64.5	\$	67.0
Accounts receivable, net		418.9		442.3
Unbilled revenue		107.8		143.5
Other current assets		99.7		89.3
Total current assets		690.9		742.1
Property and equipment, net		302.8		315.2
Intangible assets, net		122.1		132.3
Goodwill		2,021.5		2,021.4
Operating lease assets		86.0		86.1
Other assets		40.2		55.1
Total assets	\$	3,263.5	\$	3,352.2
Liabilities and stockholders' equity				
Current liabilities:				
Accounts payable	\$	120.2	\$	136.2
Deferred revenue		90.9		68.2
Current portion of self-insurance reserves		53.4		54.8
Accrued expenses and other current liabilities		129.5		180.2
Current portion of operating lease liabilities		27.2		27.3
Total current liabilities		421.2		466.7
Long-term debt, net		879.8		888.1
Deferred tax liabilities		41.0		51.1
Self-insurance reserves		108.1		105.1
Long-term operating lease liabilities		65.2		65.1
Other liabilities		33.0		34.6
Total liabilities		1,548.3		1,610.7
Mezzanine equity:				
Series A convertible preferred shares, \$0.01 par value, 7% cumulative dividends; 500,000 shares issued and outstanding as of December 31, 2023 and September 30, 2023, aggregate liquidation preference of \$512.0 and \$503.2 as of December 31, 2023 and September 30, 2023, respectively		507.1		498.2
Stockholders' equity:				
Preferred stock, \$0.01 par value; 50,000,000 shares authorized; no shares issued or outstanding as of December 31, 2023 and September 30, 2023		—		—
Common stock, \$0.01 par value; 500,000,000 shares authorized; 107,800,000 and 106,600,000 shares issued and 94,400,000 and 93,600,000 shares outstanding as of December 31, 2023 and September 30, 2023, respectively		1.1		1.1
Treasury stock, at cost; 13,400,000 and 13,000,000 shares as of December 31, 2023 and September 30, 2023, respectively		(172.9)		(170.4)

Additional paid-in capital	1,527.4	1,530.8
Accumulated deficit	(151.7)	(135.3)
Accumulated other comprehensive income	4.2	17.1
Total stockholders' equity	1,208.1	1,243.3
Total liabilities, mezzanine equity and stockholders' equity	\$ 3,263.5	\$ 3,352.2
	March 31, 2024	September 30, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 177.3	\$ 67.0
Accounts receivable, net	420.8	442.3
Unbilled revenue	112.2	143.5
Other current assets	88.3	89.3
Total current assets	798.6	742.1
Property and equipment, net	304.0	315.2
Intangible assets, net	112.7	132.3
Goodwill	2,015.7	2,021.4
Operating lease assets	84.2	86.1
Other assets	46.4	55.1
Total assets	\$ 3,361.6	\$ 3,352.2
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 131.4	\$ 136.2
Deferred revenue	103.5	68.2
Current portion of self-insurance reserves	52.6	54.8
Accrued expenses and other current liabilities	164.4	180.2
Current portion of operating lease liabilities	25.3	27.3
Total current liabilities	477.2	466.7
Long-term debt, net	880.4	888.1
Deferred tax liabilities	43.1	51.1
Self-insurance reserves	108.3	105.1
Long-term operating lease liabilities	65.2	65.1
Other liabilities	36.4	34.6
Total liabilities	1,610.6	1,610.7
Mezzanine equity:		
Series A convertible preferred shares, \$0.01 par value, 7% cumulative dividends; 500,000 shares issued and outstanding as of March 31, 2024 and September 30, 2023, aggregate liquidation preference of \$512.0 and \$503.2 as of March 31, 2024 and September 30, 2023, respectively	507.1	498.2
Stockholders' equity:		
Preferred stock, \$0.01 par value; 50,000,000 shares authorized; no shares issued or outstanding as of March 31, 2024 and September 30, 2023	—	—
Common stock, \$0.01 par value; 500,000,000 shares authorized; 107,900,000 and 106,600,000 shares issued and 94,500,000 and 93,600,000 shares outstanding as of March 31, 2024 and September 30, 2023, respectively	1.1	1.1
Treasury stock, at cost; 13,400,000 and 13,000,000 shares as of March 31, 2024 and September 30, 2023, respectively	(172.9)	(170.4)
Additional paid-in capital	1,523.4	1,530.8
Accumulated deficit	(118.0)	(135.3)
Accumulated other comprehensive income	10.3	17.1
Total stockholders' equity	1,243.9	1,243.3
Total liabilities, mezzanine equity and stockholders' equity	\$ 3,361.6	\$ 3,352.2

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

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BrightView Holdings, Inc.
Consolidated Statements of Operations
(Unaudited)
(In millions, except per share data)

	Three Months Ended	
	December 31,	
	2023	2022
Net service revenues	\$ 626.7	\$ 655.9
Cost of services provided	492.9	508.3
Gross profit	133.8	147.6
Selling, general and administrative expense	129.9	137.6
Amortization expense	10.1	11.9
(Loss) income from operations	(6.2)	(1.9)
Other (income)	(1.2)	(0.7)
Interest expense	17.1	23.2
(Loss) before income taxes	(22.1)	(24.4)
Income tax (benefit)	(5.7)	(5.5)
Net (loss)	\$ (16.4)	\$ (18.9)
Less: dividends on Series A convertible preferred shares	8.9	-
Net (loss) attributable to common stockholders	\$ (25.3)	\$ (18.9)
(Loss) per share:		
Basic and diluted (loss) per share	\$ (0.27)	\$ (0.20)

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Net service revenues	\$ 672.9	\$ 650.4	\$ 1,299.6	\$ 1,306.3
Cost of services provided	520.9	503.3	1,013.7	1,011.6
Gross profit	152.0	147.1	285.9	294.7
Selling, general and administrative expense	125.0	138.7	255.0	276.4
(Gain) on divestiture	(43.9)	—	(43.9)	—
Amortization expense	8.7	11.0	18.8	22.9
Income (loss) from operations	62.2	(2.6)	56.0	(4.6)
Other (income)	(0.8)	(0.6)	(1.9)	(1.4)
Interest expense, net	16.0	27.7	33.0	50.9
Income (loss) before income taxes	47.0	(29.7)	24.9	(54.1)
Income tax expense (benefit)	13.3	(7.7)	7.6	(13.2)
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)
Less: dividends on Series A convertible preferred shares	8.9	-	17.8	-
Net income (loss) attributable to common stockholders	\$ 24.8	\$ (22.0)	\$ (0.5)	\$ (40.9)
Earnings (loss) per share:				

Basic and diluted earnings (loss) per share	\$ 0.17	\$ (0.23)	\$ (0.01)	\$ (0.44)
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The accompanying notes are an integral part of these unaudited consolidated financial statements.

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BrightView Holdings, Inc.
Consolidated Statements of Comprehensive Income (Loss)
(Unaudited)
(In millions)

	Three Months Ended	
	December 31,	
	2023	2022
Net (loss)	\$ (16.4)	\$ (18.9)
Net derivative losses and other costs arising during the period, net of tax (benefit) of \$(3.8) and \$0.0 ⁽¹⁾	(10.6)	—
Reclassification of (gains) into net (loss), net of tax (expense) of \$(0.6) and \$(0.6), respectively	(2.3)	(2.4)
Other comprehensive (loss)	(12.9)	(2.4)
Comprehensive (loss)	\$ (29.3)	\$ (21.3)

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)
Net derivative gains (losses) and other costs arising during the period, net of tax expense (benefit) of \$2.9; \$0.4; \$(0.9); and \$0.4, respectively ⁽¹⁾	8.0	1.2	(2.6)	1.2
Reclassification of (gains) into net income (loss), net of tax (expense) of \$(0.9); \$(0.4); \$(1.4); and \$(1.0), respectively	(1.9)	(0.9)	(4.2)	(3.3)
Other comprehensive income (loss)	6.1	0.3	(6.8)	(2.1)
Comprehensive income (loss)	\$ 39.8	\$ (21.7)	\$ 10.5	\$ (43.0)

⁽¹⁾ Other costs include the effects of foreign currency translation adjustments which were immaterial during the periods presented.

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

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BrightView Holdings, Inc.
Consolidated Statements of Changes in Stockholders' Equity
Three and Six Months ended December 31, 2023 Ended March 31, 2024 and 2022
(Unaudited)
(in millions)

	Stockholders' Equity								Mezzanine Equity		Stockholders' Equity							
	Accumulated										Accumulated							
	Additional		Other		Total				Additional		Other		Total					
	Common Stock	Paid-In	Accumulated	Comprehensive	Treasury	Stockholders'	Preferred	Equity	Common Stock	Paid-In	Accumulated	Comprehensive	Treasury	Stockholders'	Preferred	Equity	Common Stock	Paid-In
	Shares	Amount	Capital	Deficit	Income (Loss)	Stock		Shares	Amount	Capital	Deficit	Income (Loss)	Stock		Shares	Amount	Capital	Deficit
Balance, December 31, 2023	107.8	\$ 1.1	\$ 1,527.4	\$ (151.7)	\$ 4.2	\$ (172.9)	\$ 1,208.1	0.5	\$ 507.1									
Net income	—	—	—	33.7	—	—	33.7	—	—									
Other comprehensive income, net of tax	—	—	—	—	6.1	—	6.1	—	—									
Capital contributions and issuance of common stock	0.1	—	—	—	—	—	—	—	—									
Equity-based compensation	—	—	4.9	—	—	—	4.9	—	—									
Series A Preferred Stock dividends	—	—	(8.9)	—	—	—	(8.9)	—	—									
Balance, March 31, 2024	107.9	\$ 1.1	\$ 1,523.4	\$ (118.0)	\$ 10.3	\$ (172.9)	\$ 1,243.9	0.5	\$ 507.1									
Balance, September 30, 2023	106.6	\$ 1.1	\$ 1,530.8	\$ (135.3)	\$ 17.1	\$ (170.4)	\$ 1,243.3	0.5	\$ 498.2	106.6	\$ 1.1	\$ 1,530.8	\$ (135.3)	\$ 17.1	\$ (170.4)	\$ 1		
Net (loss)	—	—	—	(16.4)	—	—	(16.4)	—	—									
Net income	—	—	—	17.3	—	—	17.3	—	—									
Other comprehensive (loss), net of tax	—	—	—	—	(12.9)	—	(12.9)	—	—	—	—	—	—	—	(6.8)	—		
Capital contributions and issuance of common stock	1.2	0.4	—	—	—	0.4	—	—	1.3	—	0.4	—	—	—	—			
Equity-based compensation	—	—	5.1	—	—	—	5.1	—	—	—	—	10.0	—	—	—			
Repurchase of common stock and distributions	—	—	—	—	—	(2.5)	(2.5)	—	—	—	—	—	—	—	—	(2.5)		

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

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BrightView Holdings, Inc.
Consolidated Statements of Cash Flows
(Unaudited)
(In millions)

	Three Months Ended		Six Months Ended	
	December 31,		March 31,	
	2023	2022	2024	2023
Cash flows from operating activities:				
Net (loss)	\$ (16.4)	\$ (18.9)		
Adjustments to reconcile net (loss) to net cash provided (used) by operating activities:				
Net income (loss)	\$ 17.3	\$ (40.9)		
Adjustments to reconcile net income (loss) to net cash provided by operating activities:				
Depreciation	25.6	27.1	51.7	54.5
Amortization of intangible assets	10.1	11.9	18.8	22.9
Amortization of financing costs and original issue discount	0.7	0.9	1.3	1.8
Deferred taxes	(6.7)	(8.3)	(7.2)	(17.2)
Equity-based compensation	5.1	5.6	10.0	11.9
Realized (gain) on hedges	(2.9)	(3.0)	(5.6)	(4.3)
Gain on divestiture	(43.9)	—		
Other non-cash activities	1.9	0.6	2.1	0.9
Change in operating assets and liabilities:				
Accounts receivable	21.0	(15.6)	16.8	(17.2)
Unbilled and deferred revenue	58.4	23.7	67.4	37.5
Other operating assets	(9.9)	(5.8)	4.3	23.3
Accounts payable and other operating liabilities	(60.7)	(47.8)	(23.5)	(18.2)
Net cash provided (used) by operating activities	26.2	(29.6)		
Net cash provided by operating activities	109.5	55.0		
Cash flows from investing activities:				
Purchase of property and equipment	(10.1)	(27.2)	(22.7)	(42.7)
Proceeds from sale of property and equipment	1.2	1.4	2.6	3.6
Business acquisitions, net of cash acquired	—	(10.0)	—	(13.8)
Proceeds from divestiture	51.6	—		
Other investing activities	0.3	0.8	0.8	1.1
Net cash (used) by investing activities	(8.6)	(35.0)		
Net cash provided (used) by investing activities	32.3	(51.8)		
Cash flows from financing activities:				
Repayments of finance lease obligations	(7.5)	(8.7)	(15.5)	(14.7)
Repayments of term loan	—	(3.0)	—	(6.0)
Repayments of receivables financing agreement	(9.5)	(114.0)	(9.5)	(279.5)

Repayments of revolving credit facility	—	(33.5)		
Proceeds from receivables financing agreement, net of issuance costs	0.5	171.0	0.5	298.0
Proceeds from revolving credit facility	—	24.0	—	33.5
Debt issuance and prepayment costs	(0.4)	—	(0.4)	—
Proceeds from issuance of common stock, net of share issuance costs	0.2	0.3	0.6	0.7
Repurchase of common stock and distributions	(2.5)	(1.2)	(2.5)	(1.2)
Contingent business acquisition payments	(1.0)	(1.6)	(4.7)	(9.6)
Other financing activities	0.1	0.1		
Net cash (used) provided by financing activities	(20.1)	66.9		
Net cash (used) by financing activities	(31.5)	(12.3)		
Net change in cash and cash equivalents	(2.5)	2.3	110.3	(9.1)
Cash and cash equivalents, beginning of period	67.0	20.1	67.0	20.1
Cash and cash equivalents, end of period	\$ 64.5	\$ 22.4	\$ 177.3	\$ 11.0
Supplemental Cash Flow Information:				
Cash (received) paid for income taxes, net	\$ (0.2)	\$ —	\$ 4.1	\$ (21.8)
Cash paid for interest	\$ 18.0	\$ 21.7	\$ 35.3	\$ 37.2
Non-cash Series A Preferred Stock dividends	\$ 8.9	\$ —	\$ 8.9	\$ —

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

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BrightView Holdings, Inc.
Notes to Consolidated Financial Statements
(Unaudited)
(In millions, except per share and share data)

1. Business

BrightView Holdings, Inc. (the "Company" and, collectively with its consolidated subsidiaries, "BrightView") provides landscape maintenance and enhancements, landscape development, snow removal and other landscape related services for commercial customers throughout the United States. BrightView is aligned into two reportable segments: Maintenance Services and Development Services. Prior to its initial public offering completed in July 2018 (the "IPO"), the Company was a wholly-owned subsidiary of BrightView Parent L.P. ("Parent"), an affiliate of KKR & Co. Inc. ("KKR"). The Parent and Company were formed through a series of transactions entered into by KKR to acquire the Company on December 18, 2013 (the "KKR Acquisition"). The Parent was dissolved in August 2018 following the IPO.

Basis of Presentation

These consolidated financial statements have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim reporting and are unaudited.

In the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments, including normal, recurring accruals that are necessary for a fair presentation of the Company's operations for the periods presented in conformity with GAAP. All intercompany activity and balances have been eliminated from the consolidated financial statements. The consolidated results of operations for the interim periods presented are not necessarily indicative of results for the full year.

The Consolidated Balance Sheet as of September 30, 2023, presented herein, has been derived from the Company's audited consolidated financial statements as of and for the fiscal year ended September 30, 2023, but does not include all disclosures required by GAAP, for annual financial statements. For a more complete discussion of the Company's accounting policies and certain other information, refer to the audited consolidated financial statements and the notes thereto included in the Company's annual report on Form 10-K for the fiscal year ended September 30, 2023, filed with the Securities and Exchange Commission ("SEC").

Use of Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. On an ongoing basis, management reviews its estimates, including those related to allowances for doubtful accounts, revenue recognition, self-insurance reserves, estimates related to the Company's assessment of goodwill for impairment, useful lives for depreciation and amortization, realizability of deferred tax assets, and litigation based on currently available information. Changes in facts and circumstances may result in revised estimates and actual results may differ from estimates.

2. Recent Accounting Pronouncements

Reference Rate Reform

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* which provides optional expedients and exceptions for the accounting for contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. **This guidance is effective for the Company upon issuance through December 31, 2022.** The guidance in ASU 2020-04 is optional and may be elected over time as reference rate reform activities occur. In January 2021, the FASB issued ASU 2021-01 to clarify the scope of certain optional expedients for derivatives that are affected by the discounting transition. In December 2022, the FASB issued ASU 2022-06 to defer the sunset date of Topic 848 from December 31, 2022, to December 31, 2024, after which entities will no longer be permitted to apply the relief in Topic 848. As of **December 31, 2023** **March 31, 2024**, the Company was not party to any contracts, hedging relationships, or other transactions affected by reference rate reform.

Segment Reporting

1 As defined by the National Oceanic Atmospheric Administration, U.S. Department of Commerce ("NOAA") for the Company's footprint during the respective three-month periods

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In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*. The ASU expands public entities' segment disclosures by requiring disclosure of significant segment expenses that are regularly provided to the chief operating decision maker and included within each reported measure of segment profit or loss, an amount

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and description of its composition for other segment items, and interim disclosures of a reportable segment's profit or loss and assets. The purpose of the guidance is to enable investors to better understand an entity's overall performance and assess potential future cash flows. The amendment is effective for fiscal years beginning after December 15, 2023 and interim periods beginning after December 15, 2024. The Company is in the process of evaluating the impact of ASU No. 2023-07 on its consolidated financial statements.

Income Taxes

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*. The ASU expands public entities tax disclosures including improving disclosures surrounding the company's rate reconciliation, cash taxes paid, and disaggregation of income tax expense (or benefit) from continuing operations. The amendment is effective for annual periods beginning after December 15, 2024. The Company is in the process of evaluating the impact of ASU No. 2023-09 on its consolidated financial statements.

3. Revenue

The Company's revenue is generated from Maintenance Services and Development Services. The Company generally recognizes revenue from the sale of services as the services are performed, typically ratably over the term of the contract(s), which the Company believes to be the best measure of progress. The Company recognizes revenues as it transfers control of products and services to its customers. The Company recognizes revenue in an amount reflecting the total consideration it expects to receive from the customer. Revenue is recognized according to the following five step model: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3)

determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenues when a performance obligation is satisfied. The Company determined that for contracts containing multiple performance obligations, stand-alone selling price is readily determinable for each performance obligation and therefore allocation of the transaction price to multiple performance obligations is not necessary. The transaction price will include estimates of variable consideration, such as returns and provisions for doubtful accounts and sales incentives, to the extent it is probable that a significant reversal of revenue recognized will not occur. In all cases, when a sale is recorded by the Company, no significant uncertainty exists surrounding the purchaser's obligation to pay.

Maintenance Services

The Company's Maintenance Services revenues are generated primarily through landscape maintenance services and snow removal services. Landscape maintenance services that are primarily viewed as non-discretionary, such as lawn care, mowing, gardening, mulching, leaf removal, irrigation and tree care, are provided under recurring annual contracts, which typically range from one to three years in duration and are generally cancellable by the customer with 30-90 days' notice. Snow removal services are provided on either fixed fee based contracts or per occurrence contracts. Both landscape maintenance services and snow removal services can also include enhancement services that represent supplemental maintenance or improvement services generally provided under contracts of short duration related to specific services. Revenue for landscape maintenance and snow removal services under fixed fee models is recognized over time using an output based method. Additionally, a portion of the Company's recurring fixed fee landscape maintenance and snow removal services are recorded under the series guidance. The right to invoice practical expedient is generally applied to revenue related to landscape maintenance and snow removal services performed in relation to per occurrence contracts as well as enhancement services. When use of the practical expedient is not appropriate for these contracts, revenue is recognized using a cost-to-cost input method. Fees for contracted landscape maintenance services are typically billed on an equal monthly basis. Fees for fixed fee snow removal services are typically billed on an equal monthly basis during snow season, while fees for time and material or other activity-based snow removal services are typically billed as the services are performed. Fees for enhancement services are typically billed as the services are performed.

Development Services

Development Services revenues are generated primarily through landscape architecture and development services. These revenues are primarily recognized over time using the cost-to-cost input method, measured by the percentage of cost incurred to date to the estimated total cost for each contract, which we believe to be the best measure of progress. The full amount of anticipated losses on contracts is recorded as soon as such losses can be estimated. These losses are immaterial to current and historical operations. Changes in job performance, job conditions, and estimated profitability, including final contract settlements, may result in revisions to costs and revenue and are recognized in the period in which the revisions are determined.

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Disaggregation of revenue

The following table presents the Company's reportable segment revenues, disaggregated by revenue type. The Company disaggregates revenue from contracts with customers into major services lines. The Company has determined that disaggregating revenue into these categories depicts how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. As noted in the business segment reporting information in Note 12 "Segments", the Company's reportable segments are Maintenance Services and Development Services.

	Three Months Ended		Three Months Ended		Six Months Ended	
	December 31,		March 31,		March 31,	
	2023	2022	2024	2023	2024	2023
Landscape Maintenance	\$ 402.6	\$ 421.4	\$ 337.4	\$ 359.0	\$ 740.1	\$ 780.5
Snow Removal	39.7	61.8	173.1	138.8	212.7	200.6
Maintenance Services	442.3	483.2	510.5	497.8	952.8	981.1
Development Services	185.4	174.4	164.4	155.6	349.7	329.9
Eliminations	(1.0)	(1.7)	(2.0)	(3.0)	(2.9)	(4.7)
Net service revenues	\$ 626.7	\$ 655.9	\$ 672.9	\$ 650.4	\$ 1,299.6	\$ 1,306.3

Remaining Performance Obligations

Remaining performance obligations represent the estimated revenue expected to be recognized in the future related to performance obligations which are fully or partially unsatisfied at the end of the period.

As of **December 31, 2023** **March 31, 2024**, the estimated future revenues for remaining performance obligations that are part of a contract that has an original expected duration of greater than one year was approximately **\$490.7** **519.1**. The Company expects to recognize revenue on **53.52%** of the remaining performance obligations over the next 12 months and an additional **47.48%** over the 12 months thereafter.

Contract Assets and Liabilities

When a contract results in revenue being recognized in excess of the amount the Company has invoiced or has the right to invoice to the customer, a contract asset is recognized. Contract assets are transferred to Accounts receivable, net when the rights to the consideration become unconditional. Contract assets are presented as Unbilled revenue on the Consolidated Balance Sheets.

There were **\$49.0** **92.4** of amounts billed **during the period** and **\$13.3** **61.1** of additions to our unbilled revenue balance during the **twelve** **six** month period ended **December 31, 2023** **March 31, 2024**.

Contract liabilities consist of payments received from customers, or such consideration that is contractually due, in advance of providing the product or performing services such that control has not passed to the customer. Contract liabilities are presented as Deferred revenue on the Consolidated Balance Sheets.

Changes in Deferred revenue for the **three** **six** month period ended **December 31, 2023** **March 31, 2024** were as follows:

	Deferred Revenue	Deferred Revenue
Balance, September 30, 2023	\$ 68.2	\$ 68.2
Recognition of revenue	(245.5)	(511.4)
Deferral of revenue	268.2	547.6
Balance, December 31, 2023	<u><u>\$ 90.9</u></u>	
Divestiture (Note 6)	(0.9)	
Balance, March 31, 2024	<u><u>\$ 103.5</u></u>	

Practical Expedients and Exemptions

The Company offers certain interest-free contracts to customers where payments are received over a period not exceeding one year. Additionally, certain Maintenance Services and Development Services customers may pay in advance for services. The Company does not adjust the promised amount of consideration for the effects of these financing components. At contract inception, the period of time between the performance of services and the customer payment is one year or less.

As permitted under the practical expedient available under ASU No. 2014-09, the Company does not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less, (ii) contracts with variable consideration that is allocated entirely to unsatisfied performance obligations or to a wholly unsatisfied promise accounted for under the

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series guidance and (iii) contracts for which the Company recognizes revenue at the amount which we have the right to invoice for services performed.

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4. Accounts Receivable, net

Accounts receivable of \$418.9 420.8 and \$442.3, is net of an allowance for doubtful accounts of \$7.6 9.0 and \$5.1 and includes amounts of retention on incomplete projects to be completed within one year of \$63.2 60.8 and \$58.7 at December 31, 2023 as of March 31, 2024 and September 30, 2023, respectively.

5. Property and Equipment, net

Property and equipment, net consists of the following:

	Useful Life	December 31,		September 30,		Useful Life	March 31,		September 30,	
		2023	2023	2023	2024		2024	2023	2023	2023
Land	—	\$ 44.7	\$ 44.7	\$ 44.7	\$ 44.7	—	\$ 44.7	\$ 44.7	\$ 44.7	\$ 44.7
Buildings and leasehold improvements	2-40 yrs.	46.1	45.6	45.6	46.7	2-40 yrs.	46.7	45.6	45.6	45.6
Operating equipment	2-7 yrs.	341.7	338.8	338.8	350.4	2-7 yrs.	350.4	338.8	338.8	338.8
Transportation vehicles	3-7 yrs.	347.5	351.9	351.9	356.6	3-7 yrs.	356.6	351.9	351.9	351.9
Office equipment and software	3-10 yrs.	71.0	68.7	68.7	75.7	3-10 yrs.	75.7	68.7	68.7	68.7
Construction in progress	—	7.9	7.7	7.7	4.1	—	4.1	7.7	7.7	7.7
Property and equipment		858.9	857.4	857.4	878.2		878.2	857.4	857.4	857.4
Less: Accumulated depreciation		556.1	542.2	542.2	574.2		574.2	542.2	542.2	542.2
Property and equipment, net		\$ 302.8	\$ 315.2	\$ 315.2	\$ 304.0		\$ 304.0	\$ 315.2	\$ 315.2	\$ 315.2

Construction in progress includes costs incurred for software and other assets that have not yet been placed in service. Depreciation expense related to property and equipment was \$25.6 26.1 and \$27.1 27.4 for the three months ended December 31, 2023 March 31, 2024 and 2022, 2023, respectively. Depreciation expense related to property and equipment was \$51.7 and \$54.5 for the six months ended March 31, 2024 and 2023, respectively.

6. Intangible Assets, Goodwill, Acquisitions, and Acquisitions Divestitures

Intangible Assets

Identifiable intangible assets consist of acquired customer contracts and relationships, trademarks, and non-compete agreements. Amortization expense related to intangible assets was \$10.1 8.7 and \$11.9 11.0 for the three months ended December 31, 2023 March 31, 2024 and 2022, 2023, respectively. Amortization expense related to intangible assets was \$18.8 and \$22.9 for the six months ended March 31, 2024 and 2023, respectively. These assets are amortized over their estimated useful lives of which the reasonableness is continually evaluated by the Company. The weighted average amortization periods of intangible assets acquired during the Three Months Ended December 31, 2022 six months ended March 31, 2023 was seven years.

Intangible assets, net, as of December 31, 2023 March 31, 2024 and September 30, 2023 consisted of the following:

	December 31, 2023				September 30, 2023				March 31, 2024				September 30, 2023			
	Gross		Gross		Gross		Gross		Gross		Gross		Gross		Gross	
	Estimated Useful Life	Carrying Amount	Accumulated Amortization	Carrying Amount	Accumulated Amortization	Estimated Useful Life	Carrying Amount	Accumulated Amortization	Carrying Amount	Accumulated Amortization	Estimated Useful Life	Carrying Amount	Accumulated Amortization	Carrying Amount	Accumulated Amortization	
	6-21 yrs.	\$ 725.5	\$ (604.2)	\$ 725.5	\$ (594.1)	6-21 yrs.	\$ 715.9	\$ (603.2)	\$ 725.5	\$ (594.1)	6-21 yrs.	\$ 715.9	\$ (603.2)	\$ 725.5	\$ (594.1)	
Customer relationships	12 yrs.	3.8	(3.0)	3.8	(2.9)	12 yrs.	—	—	—	—	12 yrs.	—	—	3.8	(2.9)	
Trademarks	5 yrs.	—	—	2.7	(2.7)											
Non-compete agreements																
Total intangible assets		\$ 732.0	\$ (609.9)	\$ 732.0	\$ (599.7)		\$ 715.9	\$ (603.2)	\$ 732.0	\$ (599.7)						

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Goodwill

The following is a summary of the goodwill activity for the periods ended September 30, 2023 and December 31, 2023 March 31, 2024:

	Maintenance			Development			Maintenance			Development		
	Services		Total									
Balance, September 30, 2022	\$ 1,792.7		\$ 2,008.8	\$ 216.1		\$ 2,008.8	\$ 1,792.7		\$ 2,008.8	\$ 216.1		\$ 2,008.8
Acquisitions (1)	10.7		12.6	1.9		12.6	10.7		12.6	1.9		12.6
Balance, September 30, 2023	\$ 1,803.4		\$ 2,021.4	\$ 218.0		\$ 2,021.4	\$ 1,803.4		\$ 2,021.4	\$ 218.0		\$ 2,021.4
Acquisitions (1)	0.1		0.1	—		0.1	0.1		0.1	—		0.1
Balance, December 31, 2023	\$ 1,803.5		\$ 2,021.5	\$ 218.0		\$ 2,021.5						
Divestiture	(5.8)		(5.8)	—		(5.8)						
Balance, March 31, 2024	\$ 1,797.7		\$ 2,015.7	\$ 218.0		\$ 2,015.7						

(1) The acquisitions adjustment includes the immaterial impact of foreign currency adjustments during the period.

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Acquisitions

During the ~~three~~ six months ended December 31, 2022 ~~March 31, 2023~~, the Company acquired, through a series of separate transactions, 100% of the operations of ~~two~~ three unrelated companies, ~~both~~ all of which were allocated to Maintenance Services. The Company paid approximately \$10.0 ~~13.8~~ in aggregate consideration for the acquisitions, net of cash acquired. The Company accounted for the business combinations under the acquisition method and, accordingly, recorded the assets acquired and liabilities assumed at their estimated fair market values based on management's preliminary estimates, with the excess allocated to goodwill. The purchase accounting related to these acquisitions was finalized within one year from each acquisition date. As a result of the final purchase accounting, certain of the fair value amounts previously estimated were adjusted during the measurement period. The fair values were primarily estimated using Level 3 assumptions within the fair value hierarchy, including estimated future cash flows, discount rates and other factors. The Company continued to refine the valuation data and estimates primarily related to unbilled revenue, property and equipment, intangible assets, net, accounts payable, accrued expenses and other current liabilities and deferred revenue and will finalize the amounts recognized as it obtains the information necessary to complete the analysis, but no later than one year from the acquisition date. The measurement period adjustments were not material to the Consolidated Balance Sheets as of December 31, 2023 ~~March 31, 2024~~ and September 30, 2023. The identifiable assets acquired were primarily customer relationship intangible assets of \$2.6 ~~4.0~~. The amount allocated to goodwill is reflective of the benefits the Company expects to realize from anticipated synergies and the acquired assembled workforce. A portion of the goodwill resulting from these acquisitions is deductible for tax purposes.

Divestitures

On January 12, 2024, the Company completed the sale of one of its fully owned subsidiaries, U.S. Lawns, for total cash consideration of \$51.6. The gain on the transaction of \$43.9 is included in Gain on divestiture in the Consolidated Statement of Operations for the three and six months ended March 31, 2024. The Maintenance Services operating segment includes the operations of the divested entity, and its results of operations are included in the Consolidated Statement of Operations through January 12, 2024.

7. Long-term Debt

Long-term debt consists of the following:

	December 31,		September 30,		March 31,		September 30,	
	2023	2024	2023	2024	2023	2024	2023	2024
Series B term loan	\$ 731.9		\$ 731.7		\$ 732.2		\$ 731.7	
Receivables financing agreement	154.0		163.0		154.0		163.0	
Financing costs, net	(6.1)		(6.6)		(5.8)		(6.6)	
Long-term debt, net	879.8		888.1		\$ 880.4		\$ 888.1	

First Lien credit facility term loans and Series B Term Loan due 2029

In connection with the KKR Acquisition, the Company and a group of financial institutions entered into a credit agreement (the "Credit Agreement") dated December 18, 2013. The Credit Agreement consisted of seven-year \$1,460.0 term loans ("First Lien

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Term Loans") and a five-year \$210.0 revolving credit facility. All amounts outstanding under the Credit Agreement were collateralized by substantially all of the assets of the Company.

On April 22, 2022, the Company, entered into Amendment No. 6 to the Credit Agreement (the "Amendment Agreement"). Under the terms of the Amendment Agreement, the existing Credit Agreement was amended to provide for: (i) a \$1,200.0 seven-year term loan (the "Series B Term Loan") and (ii) a \$300.0 five-year revolving credit facility (the "Revolving Credit Facility"). The Series B Term Loan matures on April 22, 2029 and bears interest at a rate per annum of a secured overnight financing rate ("Term SOFR"), plus a margin of either 3.25% or 3.00% or a base rate ("ABR") plus a margin of either 2.25% or 2.00%, subject to SOFR and ABR floors of 0.50% and 1.50%, respectively, with the margin on the Series B Term Loan determined based on the Company's first lien net leverage ratio. The Company used the net proceeds from the Series B Term Loan to repay all amounts outstanding under the Credit Agreement as in effect prior to the Amendment Agreement. An original issue discount of \$12.0 was incurred when the Series B Term Loan was issued and is being amortized using the effective interest method over the life of the debt, resulting in an effective yield of 3.42%. ~~There were no debt repayments for the Series B Term Loan for the three months ended December 31, 2023. Debt repayments for the Series B Term Loan totaled \$3.06.0 for the three six months ended December 31, 2022 March 31, 2023.~~

On August 28, 2023, the Company voluntarily repaid \$450.0 of the amount outstanding under the Company's Amendment Agreement.

On August 31, 2023, the Company entered into Amendment No. 7 to the Credit Agreement (the "Credit Agreement Amendment"). The Credit Agreement Amendment (i) amends the definition of "Permitted Holders" to include Birch Equity Holdings, LP, a Delaware limited partnership, Birch-OR Equity Holdings, LLC, a Delaware limited liability company and One Rock Capital Partners, LLC and (ii) provides for a 1.00% prepayment premium for voluntary prepayments made in connection with repricing transactions or amendments made where the primary purpose of which is to decrease the effective yield, and which shall be applicable until six months after entering into the Credit Agreement Amendment.

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Revolving credit facility

The Company has a five-year \$300.0 revolving credit facility (the "Revolving Credit Facility") that matures on April 22, 2027 and bears interest at a rate per annum of Term SOFR plus a margin ranging from 2.00% to 2.50% or ABR plus a margin ranging from 1.00 to 1.50%, subject to SOFR and ABR floors of 0.00% and 1.00%, respectively, with the margin on the Revolving Credit Facility determined based on the Company's first lien net leverage ratio. The Revolving Credit Facility replaced the previous \$260.0 revolving credit facility under the Credit Agreement as in effect prior to the Amendment Agreement. During the ~~three six~~ months ended ~~December 31, 2023~~ March 31, 2023 the Company had borrowed and repaid \$no 33.5 outstanding balance borrowings under~~against~~ the Revolving Credit Facility. There were \$24.0 borrowings under the facility for the three months ended December 31, 2022 of which, none of the balance was repaid during the same period. ~~capacity~~ The Company had \$42.6 of letters of credit issued and outstanding as of ~~December 31, 2023~~ March 31, 2024 and September 30, 2023.

Receivables financing agreement

On April 28, 2017, the Company, through a wholly-owned subsidiary, entered into a receivables financing agreement (the "Receivables Financing Agreement"). On June 22, 2022, the Company entered into the Third Amendment to the Receivables Financing Agreement (the "Third Amendment") which extended the term through June 22, 2025 and increased the borrowing capacity to \$275.0. All amounts outstanding under the Receivables Financing Agreement are collateralized by substantially all of the accounts receivable and unbilled revenue of the Company. During the ~~three six~~ months ended ~~December 31, 2023~~ March 31, 2024 the Company borrowed \$0.5 against the capacity and voluntarily repaid \$9.5. During the ~~three six~~ months ended ~~December 31, 2022~~ March 31, 2023 the Company borrowed \$171.0 298.0 against the capacity and voluntarily repaid \$114.0 279.5.

The following are the scheduled maturities of long-term debt for the remainder of fiscal 2024 and the following ~~five four~~ fiscal years and thereafter, which do not include any estimated excess cash flow payments:

	\$		\$
2024	—	—	—
2025	154.0		154.0
2026	—		—
2027	—		—

2028			—
2029 and thereafter			—
Total long-term debt	738.0	738.0	—
Less: Current maturities	892.0	892.0	—
Less: Original issue discount	—	—	—
Less: Financing costs	6.1	5.8	—
Total long-term debt, net	6.1	5.8	—
	\$ 879.8	\$ 880.4	—

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The Company has estimated the fair value of its long-term debt to be approximately \$892.0 and \$900.1 as of **December 31, 2023** **March 31, 2024** and September 30, 2023, respectively. Fair value is based on market bid prices around period-end (Level 2 inputs).

8. Fair Value Measurements and Derivative Instruments

Fair value is defined as the price at which an orderly transaction to sell an asset or to transfer a liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

Fair Value Hierarchy

The following hierarchy for inputs used in measuring fair value should maximize the use of observable inputs and minimize the use of unobservable inputs by requiring that the most observable inputs be used when available:

- Level 1 Quoted prices in active markets for identical assets or liabilities that are accessible at the measurement dates.
- Level 2 Significant observable inputs that are used by market participants in pricing the asset or liability based on market data obtained from independent sources.
- Level 3 Significant unobservable inputs the Company believes market participants would use in pricing the asset or liability based on the best information available.

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The carrying amounts shown for the Company's cash and cash equivalents, restricted cash, accounts receivable and accounts payable approximate fair value due to the short-term maturity of those instruments. The valuation is based on settlements of similar financial instruments all of which are short-term in nature and are generally settled at or near cost.

Investments held in Rabbi Trust

A non-qualified deferred compensation plan is available to certain executives. Under this plan, participants may elect to defer up to 70% of their compensation. The Company invests the deferrals in participant-selected diversified investments that are held in a Rabbi Trust and which are classified within Other assets on the Consolidated Balance Sheets. The fair value of the investments held in the Rabbi Trust is based on the quoted market prices of the underlying mutual fund investments. These investments are based on the participants' selected investments, which represent the underlying liabilities to the participants in the non-qualified deferred compensation plan. Gains and losses on these investments are included in Other (income) on the Consolidated Statements of Operations.

Derivatives

The Company's objective in entering into derivative transactions is to manage its exposure to interest rate movements associated with its variable rate debt and changes in fuel prices. The Company recognizes derivatives as either assets or liabilities on the balance sheet and measures those instruments at fair value. The fair values of the derivative financial instruments are determined using widely accepted valuation techniques including discounted cash flow analysis based on the expected cash flows of each derivative.

Although the Company has determined that the significant inputs, such as interest yield curve and discount rate, used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with the Company's counterparties and its own credit risk utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparties. However, as of **December 31, 2023** **March 31, 2024** and September 30, 2023, the Company assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and determined that the credit valuation adjustments were not significant to the overall valuation of its derivatives. As a result, the Company has determined that its derivative valuations in their entirety are classified in Level 2 of the fair value hierarchy.

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The following tables summarize the financial assets and liabilities measured at fair value on a recurring basis as of **December 31, 2023** **March 31, 2024** and September 30, 2023:

	December 31, 2023				March 31, 2024			
	Carrying Value	Level 1	Level 2	Level 3	Carrying Value	Level 1	Level 2	Level 3
Other current assets:								
Fuel derivative contracts	0.1	—	0.1	—				
Other assets:								
Investments held by Rabbi Trust	\$ 11.8	\$ 11.8	\$ —	\$ —	\$ 11.9	\$ 11.9	\$ —	\$ —
Interest rate derivative contracts	4.1	—	4.1	—	12.4	—	12.4	—
Total assets	\$ 15.9	\$ 11.8	\$ 4.1	\$ —	\$ 24.4	\$ 11.9	\$ 12.5	\$ —
Other liabilities:								
Obligation to Rabbi Trust	\$ 11.8	\$ 11.8	\$ —	\$ —	\$ 11.9	\$ 11.9	\$ —	\$ —
Total liabilities	\$ 11.8	\$ 11.8	\$ —	\$ —	\$ 11.9	\$ 11.9	\$ —	\$ —
September 30, 2023								
	Carrying Value	Level 1	Level 2	Level 3				
Other assets:								
Investments held by Rabbi Trust	\$ 10.9	\$ 10.9	\$ —	\$ —				
Interest rate derivative contracts	21.3	—			21.3	—		
Total Assets	\$ 32.2	\$ 10.9	\$ 21.3	\$ —				
Other liabilities:								
Obligation to Rabbi Trust	\$ 10.9	\$ 10.9	\$ —	\$ —				
Total Liabilities	\$ 10.9	\$ 10.9	\$ —	\$ —				

Hedging Activities

As of **December 31, 2023** **March 31, 2024** and September 30, 2023, the Company's outstanding derivatives qualified as cash flow hedges. The Company assesses whether derivatives used in hedging transactions are "highly effective" in offsetting changes in the cash flow of the hedged forecasted transactions. Regression analysis is used for the hedge relationships and high effectiveness is achieved when a statistically valid relationship reflects a high degree of offset and correlation between the fair values of the derivative and the hedged forecasted transaction. The entire change in the fair value for highly effective derivatives is reported in Other comprehensive income (loss) and

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subsequently reclassified into Interest expense, **net** (in the case of interest rate contracts) and Cost of services provided (in the case of fuel hedge contracts) in the Consolidated Statements of Operations when the hedged item affects earnings. If the hedged forecasted transaction is no longer probable of occurring, then the amount recognized in Accumulated other comprehensive income is released to earnings. Cash flows from the derivatives are classified in the same category as the cash flows from the underlying hedged transaction.

Interest Rate Contracts

The Company has exposures to variability in interest rates associated with its variable interest rate debt, which includes the Series B Term Loan. As such, the Company has entered into interest rate contracts to help manage interest rate exposure by economically converting a portion of its variable-rate debt to fixed-rate debt. Effective for the periods March 18, 2016 through December 31, 2022, the Company held interest rate swaps with a notional amount of \$500.0. In January 2023, the Company entered into an interest rate swap agreement with a notional amount of \$500.0 and an interest rate collar agreement with a notional amount of \$500.0, each effective for the period January 31, 2023 through January 31, 2028.

On August 28, 2023, the Company terminated \$400.0 of the notional amount of its outstanding interest rate collar agreement.

The notional amount of interest rate contracts was \$600.0 and \$600.0 at **December 31, 2023** **March 31, 2024** and September 30, 2023, respectively. **The** **As of March 31, 2024**, net deferred gain on the interest rate swaps **as of December 31, 2023** of **\$5.06.1**, net of taxes, is expected to be recognized in Interest expense over the next 12 months.

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The effects on the consolidated financial statements of the interest rate contracts which were designated as cash flow hedges were as follows:

	Three Months Ended			
	December 31,			
	2023	2022		
Income (Loss) recognized in Other comprehensive (loss)	\$ (14.5)	\$ -		
Net income (loss) reclassified from Accumulated other comprehensive income into Interest expense	2.9	3.0		

	Three Months Ended				Six Months Ended			
	March 31,				March 31,			
	2024	2023	2024	2023	2024	2023	2024	2023
Income (Loss) recognized in Other comprehensive income (loss)	\$ 10.9	\$ 1.5	\$ (3.6)	\$ 1.5				
Net income reclassified from Accumulated other comprehensive income into Interest expense	2.8	1.3	5.6	4.3				

Fuel Contracts

The Company has exposures to variability in fuel pricing associated with its purchase and usage of fuel during the ordinary course of business operating a large fleet of vehicles and equipment. As such, the Company has entered into gasoline hedge contracts to help reduce its exposure to volatility in the fuel markets. In March 2024, the Company entered into a fuel swap agreement with a notional volume of 4.0 million gallons covering the period March 4, 2024 through February 24, 2025. The net deferred gain on the fuel swap as of March 31, 2024 was immaterial and is expected to be recognized in Cost of services provided over the next 12 months.

The effects on the consolidated financial statements of the fuel swap contracts which were designated as cash flow hedges were as follows:

	Three Months Ended				Six Months Ended			
	March 31,				March 31,			
	2024	2023	2024	2023	2024	2023	2024	2023
Income recognized in Other comprehensive income (loss)	\$ 0.1	\$ —	\$ 0.1	\$ —				
Net gain reclassified from Accumulated other comprehensive income into Cost of services provided	—	—	—	—				

9. Income Taxes

The following table summarizes the Company's income tax expense (benefit) and effective income tax rate for the three and six months ended December 31, 2023 March 31, 2024 and 2022 March 31, 2023.

	Three Months Ended		December 31,	
	2023	2022		
(Loss) before income taxes	\$ (22.1)	\$ (24.4)		
Income tax (benefit)	(5.7)	(5.5)		
Effective income tax rate	25.8%	22.5%		

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Income (loss) before income taxes	\$ 47.0	\$ (29.7)	\$ 24.9	\$ (54.1)
Income tax expense (benefit)	13.3	(7.7)	7.6	(13.2)
Effective income tax rate	28.3%	25.9%	30.5%	24.4%

The increase in the effective tax rate for the three and six months ended December 31, 2023 March 31, 2024, when compared to the three months and six month periods ended December 31, 2022 March 31, 2023, is primarily attributable to the increase in valuation allowance for separate state attributes pre-tax book income from the gain on the divestiture of the U.S. Lawns subsidiary as well as the reduction in expense related to the vesting distribution of restricted stock units. pre-tax earnings across legal entities.

10. Equity-Based Compensation

Amended and Restated 2018 Omnibus Incentive Plan

On June 28, 2018 (and as amended and restated on March 10, 2020 and March 5, 2024), in connection with the IPO, the Company's Board of Directors adopted, and its stockholders approved, the BrightView Holdings, Inc. 2018 Omnibus Incentive Plan (the "2018 Omnibus Incentive Plan"). The total number of shares of common stock that may be issued under the 2018 Omnibus Incentive Plan is 18,650,000 24,650,000. Under the 2018 Omnibus Incentive Plan, the Company may grant stock options, stock appreciation rights, restricted stock, other equity-based awards and other cash-based awards to employees, directors, officers, consultants and advisors.

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2023 Employment Inducement Incentive Award Plan

On September 11, 2023, the Company adopted the BrightView Holdings, Inc. 2023 Employment Inducement Incentive Award Plan (the "Inducement Plan"). Pursuant to the Inducement Plan, the Company may grant equity incentive compensation as a material inducement for certain individuals to commence employment with the Company. A total of 1,750,000 shares of common stock are reserved for grant under the Inducement Plan. Awards granted under the Inducement Plan may be in the form of non-qualified stock options, stock appreciation rights, restricted stock awards, restricted stock units, unrestricted stock awards, dividend equivalent rights and other equity-based awards, or any combination of those awards.

Restricted Stock Awards

A summary of the Company's restricted stock award activity for the three six month period ended December 31, 2023 March 31, 2024 is presented in the following table:

	Shares	Weighted-Avg Distribution Price per Share	Shares	Weighted-Avg Distribution Price per Share
Outstanding at September 30, 2023	213,000	\$ 14.66	213,000	\$ 14.66
Less: Forfeited	54,000	\$ 14.66	75,000	\$ 14.66
Outstanding at December 31, 2023	159,000	\$ 14.66		
Outstanding at March 31, 2024	138,000	\$ 14.66		

Restricted Stock Units

A summary of the Company's restricted stock unit activity for the **three** six month period ended **December 31, 2023** **March 31, 2024** is presented in the following table:

	Shares	Weighted-Avg Distribution Price per Share	Shares	Weighted-Avg Distribution Price per Share
Outstanding at September 30, 2023	3,021,000	\$ 9.32	3,021,000	\$ 9.32
Granted	2,094,000	\$ 7.44	2,331,000	\$ 7.58
Less: Vested	1,041,000	\$ 10.14	1,150,000	\$ 9.86
Less: Forfeited	124,000	\$ 10.00	348,000	\$ 9.12
Outstanding at December 31, 2023	3,950,000	\$ 8.09		
Outstanding at March 31, 2024	3,854,000	\$ 8.13		

During the **three** six month period ended **December 31, 2023** **March 31, 2024**, the Company issued **2,094,000** **2,331,000** restricted stock units ("RSUs") at a weighted average grant date fair value of **\$7.44** **7.58** per share, all of which are subject to vesting. The majority of these units vest ratably over a four-year period commencing on the grant date. Non-cash equity-based compensation expense associated with the new grants will total approximately **\$13.9** **15.3** over the requisite service period. During the **three** six month period ended **December 31, 2023** **March 31, 2024**, **1,041,000** **1,150,000** RSUs vested and **124,000** **348,000** RSUs were forfeited.

Stock Option Awards

A summary of the Company's stock option activity for the **three** six month period ended **December 31, 2023** **March 31, 2024** is presented in the following table:

	Shares	Weighted-Avg Exercise Price per Share
Outstanding at September 30, 2023	4,449,000	\$ 19.06
Less: Forfeited	327,000	\$ 19.60
Outstanding at December 31, 2023	4,122,000	\$ 19.02
Vested and exercisable at December 31, 2023	3,444,000	\$ 18.96
Expected to vest after December 31, 2023	678,000	\$ 19.31

	Shares	Weighted-Avg Exercise Price per Share
Outstanding at September 30, 2023	4,449,000	\$ 19.06
Less: Forfeited	527,000	\$ 19.29
Outstanding at March 31, 2024	3,922,000	\$ 19.03
Vested and exercisable at March 31, 2024	3,330,000	\$ 18.98
Expected to vest after March 31, 2024	592,000	\$ 19.32

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Performance Stock Unit Awards

A summary of the Company's performance stock unit activity for the **three six** month period ended **December 31, 2023** **March 31, 2024** is presented in the following table:

	Shares	Weighted-Avg Distribution Price per Share	Shares	Weighted-Avg Distribution Price per Share
Outstanding at September 30, 2023	512,000	\$ 7.48	512,000	\$ 7.48
Granted	918,000	\$ 7.35	918,000	\$ 7.35
Less: Forfeited	95,000	\$ 7.48	186,000	\$ 7.41
Outstanding at December 31, 2023	1,335,000	\$ 7.39		
Outstanding at March 31, 2024	1,244,000	\$ 7.39		

During the **three six** month period ended **December 31, 2023** **March 31, 2024**, the Company issued 918,000 performance stock units ("PSUs") at a weighted average distribution price of \$7.35 per share and a weighted average grant date fair value of \$7.35 per share, which cliff vest at the end of the three-year performance period. The number of the PSUs that vest upon completion of the performance period can range from 0% to 200% of the original grant, subject to certain limitations, contingent upon performance conditions. The performance condition metrics are the Company's three-year average Adjusted EBITDA margin and compound annual growth rate of the Company's land organic revenue. The fair value of these awards is determined based on the trading price of the company's common shares on the date of grant. Non-cash equity-based compensation expense associated with the grant will be approximately \$6.3 over the requisite service period. During the **three six** month period ended **December 31, 2023** **March 31, 2024**, no PSUs vested and **95,000** **186,000** PSUs were forfeited.

Equity-Based Compensation Expense

The Company recognizes equity-based compensation expense using the estimated fair value as of the grant date over the requisite service or performance period applicable to the grant. Estimates of future forfeitures are made at the date of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The Company recognized **\$5.1** **4.8** and **\$5.6** **6.3** in equity-based compensation expense for the three months ended **December 31, 2023** **March 31, 2024** and **2022, 2023**, respectively, included in **Selling, general and administrative expense** in the accompanying **Consolidated Statements of Operations**. The Company recognized **\$10.0** and **\$11.9** in **equity-based compensation expense** for the **six month periods** ended **March 31, 2024** and **2023**, respectively, included in **Selling, general and administrative expense** in the accompanying **Consolidated Statements of Operations**. The resulting charges increased **Additional paid-in paid in** capital by the same amount for each applicable period. Total unrecognized compensation cost was **\$39.0** **36.5** and **\$23.7** as of **December 31, 2023** **March 31, 2024** and **September 30, 2023**, respectively, which is expected to be recognized over a weighted average period of **1.4** **1.3** and **1.1** years as of **December 31, 2023** **March 31, 2024** and **September 30, 2023**, respectively.

2018 Employee Stock Purchase Plan

The Company's Stockholders have approved the Company's 2018 Employee Stock Purchase Plan, (the "ESPP"). A total of **1,100,000** **2,100,000** shares of the Company's common stock were made available for sale under the Company's 2018 Employee Stock Purchase Plan, **on October 22, 2018**, of which 188,000 were issued on November 17, 2023, and 177,000 were issued on November 14, 2022. An additional portion thereof is expected to be issued in November **2024** **2024**.

11. Commitments and Contingencies

Risk Management

The Company carries general liability, auto liability, workers' compensation, and employee health care insurance policies. In addition, the Company carries other reasonable and customary insurance policies for a Company of our size and scope, as well as umbrella liability insurance policies to cover claims over the liability limits contained in the primary policies. The Company's insurance programs, for workers' compensation, general liability, auto liability and employee health care for certain employees contain self-insured retention amounts, deductibles and other coverage limits ("self-insured liability"). Claims that are not self-insured as well as claims in excess of the self-insured liability amounts are insured. The Company uses estimates in the determination of the required reserves. These estimates are based upon calculations performed by third-party actuaries, as well as examination of historical trends and industry claims experience. The Company's reserve for unpaid and incurred but not reported claims under these programs at **December 31, 2023** **March 31, 2024** was **\$161.5** **160.9**, of which **\$53.4** **52.6** was classified in current liabilities and **\$108.1** **108.3** was classified in non-current liabilities in the accompanying unaudited **Consolidated Balance Sheet**. The Company's reserve for unpaid and incurred but not reported claims under these programs at **September 30, 2023**

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September 30, 2023 was \$159.9, of which \$54.8 was classified in current liabilities and \$105.1 was classified in non-current liabilities in the accompanying Consolidated Balance Sheet. While the ultimate amount of these claims is dependent on future developments, in management's opinion, recorded reserves are adequate to cover these claims. The Company's reserve for unpaid and incurred but not

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reported claims at December 31, 2023 March 31, 2024 includes \$19.7 15.9 related to claims recoverable from third-party insurance carriers. Corresponding assets of \$5.7 4.6 and \$14.0 11.3 are recorded at December 31, 2023 March 31, 2024, as Other current assets and Other assets, respectively. The Company's reserve for unpaid and incurred but not reported claims at September 30, 2023 includes \$18.1 related to claims recoverable from third-party insurance carriers. Corresponding assets of \$5.3 and \$12.8 were recorded at September 30, 2023, as Other current assets and Other assets, respectively.

Litigation Contingency

From time to time, the Company is subject to legal proceedings and claims in the ordinary course of its business, principally claims made alleging injuries (including vehicle and general liability matters as well as workers' compensation and property casualty claims). Such claims, even if lacking merit, can result in expenditures of significant financial and managerial resources. In the ordinary course of its business, the Company is also subject to investigations or claims involving current and/or former employees and disputes involving commercial and regulatory matters. Regulatory matters include, among other things, audits and reviews of local and federal tax compliance, safety and employment practices, and environmental matters. Although the process of resolving regulatory matters and claims through litigation and other means is inherently uncertain, the Company is not aware of any such matter, legal proceeding or claim that it believes will have, individually or in the aggregate, a material effect on the Company, its financial condition, and results of operations or cash flows. For all legal matters, an estimated liability is established in accordance with the loss contingencies accounting guidance. This estimated liability is included in Accrued expenses and other current liabilities in the accompanying Consolidated Balance Sheets.

12. Segments

The operations of the Company are conducted through two operating segments: Maintenance Services and Development Services, which are also its reportable segments.

Maintenance Services primarily consists of recurring landscape maintenance services and snow removal services as well as supplemental landscape enhancement services.

Development Services primarily consists of landscape architecture and development services for new construction and large scale redesign projects.

The operating segments identified above are determined based on the services provided, and they reflect the manner in which operating results are regularly reviewed by the Chief Operating Decision Maker ("CODM") to allocate resources and assess performance. The CODM is the Company's Chief Executive Officer. The CODM evaluates the performance of the Company's operating segments based upon Net Service Revenues, Adjusted EBITDA and Capital Expenditures. Management uses Adjusted EBITDA to evaluate performance and profitability of each operating segment.

The accounting policies of the segments are the same as those described in Note 2 "Summary of Significant Accounting Policies" in the notes to our consolidated financial statements in the Annual Report on Form 10-K for the fiscal year ended September 30, 2023. Corporate includes corporate executive compensation, finance, legal and information technology which are not allocated to the segments. Eliminations represent eliminations of intersegment revenues. The Company does not currently provide asset information by segment, as this information is not used by management when allocating resources or evaluating performance.

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The following is a summary of certain financial data for each of the segments:

Three Months Ended
December 31,

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	2023	2022
Maintenance Services	\$ 442.3	\$ 483.2
Development Services	185.4	174.4
Eliminations	(1.0)	(1.7)
Net Service Revenues	<u><u>\$ 626.7</u></u>	<u><u>\$ 655.9</u></u>
Maintenance Services	\$ 42.0	\$ 50.5
Development Services	19.6	16.5
Corporate	(14.9)	(18.4)
Adjusted EBITDA ⁽¹⁾	<u><u>\$ 46.7</u></u>	<u><u>\$ 48.6</u></u>
Maintenance Services	\$ 7.7	\$ 24.0
Development Services	1.2	2.0
Corporate	1.2	1.2
Capital Expenditures	<u><u>\$ 10.1</u></u>	<u><u>\$ 27.2</u></u>

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	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Maintenance Services	\$ 510.5	\$ 497.8	\$ 952.8	\$ 981.1
Development Services	164.4	155.6	349.7	329.9
Eliminations	(2.0)	(3.0)	(2.9)	(4.7)
Net Service Revenues	<u><u>\$ 672.9</u></u>	<u><u>\$ 650.4</u></u>	<u><u>\$ 1,299.6</u></u>	<u><u>\$ 1,306.3</u></u>
Maintenance Services	\$ 66.5	\$ 51.7	\$ 108.5	\$ 102.2
Development Services	14.4	13.1	34.0	29.6
Corporate	(16.1)	(18.0)	(31.0)	(36.5)
Adjusted EBITDA ⁽¹⁾	<u><u>\$ 64.8</u></u>	<u><u>\$ 46.8</u></u>	<u><u>\$ 111.5</u></u>	<u><u>\$ 95.3</u></u>
Maintenance Services	\$ 8.8	\$ 12.7	\$ 16.5	\$ 36.7
Development Services	3.1	2.7	4.3	4.7
Corporate	0.7	0.1	1.9	1.3
Capital Expenditures	<u><u>\$ 12.6</u></u>	<u><u>\$ 15.5</u></u>	<u><u>\$ 22.7</u></u>	<u><u>\$ 42.7</u></u>

(1) Presented below is a reconciliation of Net **income** (loss) to Adjusted EBITDA:

	Three Months Ended		Six Months Ended	
	December 31,		December 31,	
	2023	2022	2023	2022
Net (loss)	\$ (16.4)	\$ (18.9)	\$ (16.4)	\$ (18.9)
Interest expense	17.1	23.2	—	—
Income tax (benefit)	(5.7)	(5.5)	—	—
Depreciation expense	25.6	27.1	—	—
Amortization expense	10.1	11.9	—	—
Business transformation and integration costs (a)	10.7	4.7	—	—
Equity-based compensation (b)	5.3	5.7	—	—
COVID-19 related expenses (c)	—	0.4	—	—
Adjusted EBITDA	<u><u>\$ 46.7</u></u>	<u><u>\$ 48.6</u></u>	<u><u>\$ 46.7</u></u>	<u><u>\$ 48.6</u></u>

Three Months Ended

Six Months Ended

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)
Interest expense, net	16.0	27.7	33.0	50.9
Income tax expense (benefit)	13.3	(7.7)	7.6	(13.2)
Depreciation expense	26.1	27.4	51.7	54.5
Amortization expense	8.7	11.0	18.8	22.9
Business transformation and integration costs (a)	6.1	4.1	16.9	8.7
Gain on divestiture (b)	(43.9)	—	(43.9)	—
Equity-based compensation (c)	4.8	6.3	10.1	12.0
COVID-19 related expenses (d)	—	—	—	0.4
Adjusted EBITDA	<u>\$ 64.8</u>	<u>\$ 46.8</u>	<u>\$ 111.5</u>	<u>\$ 95.3</u>

(a) Business transformation and integration costs consist of (i) severance and related costs; (ii) business integration costs and (iii) information technology infrastructure, transformation, and other costs.

(in millions)	Three Months Ended		Three Months Ended		Six Months Ended	
	December 31,		March 31,		March 31,	
	2023	2022	2024	2023	2024	2023
Severance and related costs	\$ 2.5	\$ 0.1	\$ 3.7	\$ 1.8	\$ 6.2	\$ 1.9
Business integration (d)(e)	0.6	2.7	(1.5)	-	(0.9)	2.5
IT infrastructure, transformation, and other (e)(f)	7.6	1.9	3.9	2.3	11.6	4.3
Business transformation and integration costs	<u>\$ 10.7</u>	<u>\$ 4.7</u>	<u>\$ 6.1</u>	<u>\$ 4.1</u>	<u>\$ 16.9</u>	<u>\$ 8.7</u>

(b) Represents the realized gain on sale and transaction related expenses from the divestiture of U.S. Lawns on January 12, 2024.

(c) Represents equity-based compensation expense and related taxes recognized for equity incentive plans outstanding.

(c)(d) Represents expenses related to the Company's response to the COVID-19 pandemic, principally temporary and incremental salary and related expenses, personal protective equipment, clean supply purchases, and other.

(d)(e) Represents isolated expenses specifically related to the integration of acquired companies such as one-time employee retention costs, employee onboarding and training costs, and fleet and rebranding costs, and adjustments to performance based contingent consideration. The Company excludes Business integration costs from the measures disclosed above since such expenses vary in amount due to the number of acquisitions and size of acquired companies as well as factors specific to each acquisition, and as a result lack predictability as to occurrence and/or timing, and create a lack of comparability between periods.

(e)

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(f) Represents expenses related to distinct initiatives, typically significant enterprise-wide changes. Such expenses are excluded from the measures disclosed above since such expenses vary in amount based on occurrence as well as factors specific to each of the activities, are outside of the normal operations of the business, and create a lack of comparability between periods.

13. Mezzanine Equity

Series A Convertible Preferred Stock

On August 28, 2023 (the "Original Issuance Date"), BrightView Holdings, Inc. entered into an Investment Agreement with each of Birch Equity Holdings, LP, a Delaware limited partnership, and Birch-OR Equity Holdings, LLC, a Delaware limited liability company (collectively, the "Investors"), pursuant to which the Company issued and sold, in a private placement, an aggregate of 500,000 shares of the Company's Series A Convertible Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), for an aggregate purchase price of \$500.0 (the "Issuance"), excluding issuance costs. During the period ended On December 31, 2023, the Company paid in-kind dividends of \$8.9 million in the aggregate on the Series A Preferred Stock which increased the aggregate liquidation preference of the Series A Preferred Stock by the same amount.

21 On March 14, 2024 the company declared a cash dividend of \$8.9 in aggregate on the Series A Preferred Stock, which was paid to the Investors on April 1, 2024.

The accrued dividend is presented within Accrued expense and other current liabilities on the Consolidated Balance Sheet as of March 31, 2024.

Table of Contents**14. Earnings (Loss) Per Share of Common Stock**

The Company calculates basic and diluted (loss) earnings per common share using the two-class method. The two-class method is an allocation formula that determines net (loss) income per common share for each share of common stock and Series A Convertible Preferred Stock, a participating security, according to dividends declared and participation rights in undistributed earnings. Under this method, all earnings (distributed and undistributed) are allocated to common shares and Series A Convertible Preferred Stock based on their respective rights to receive dividends. The holders of the Series A Convertible Preferred Stock do not participate in losses. The holders of Series A Convertible Preferred Stock participate in cash dividends that the Company pays on its common stock in an as-converted basis. Diluted net (loss) income per common share is computed based on the weighted average number of shares of common stock outstanding during each period, plus potential common shares considered outstanding during the period, as long as the inclusion of such awards is not antidilutive. Potential common shares consist of unvested and unexercised stock compensation awards and the Series A Convertible Preferred Stock, using the more dilutive of either the two-class method or if-converted stock method.

Set forth below is a reconciliation of the numerator and denominator for basic and diluted (loss) earnings per share calculation for the periods indicated:

	Three Months Ended			
	December 31,			
	2023	2022		
Numerator:				
Net (loss)	\$ (16.4)	\$ (18.9)		
Less: dividends on Series A convertible preferred shares	\$ 8.9	\$ —		
Net (loss) attributable to common stockholders	\$ (25.3)	\$ (18.9)		
Denominator:				
Weighted average number of common shares outstanding – basic and diluted	93,986,000	93,252,000		
Basic and diluted (loss) per share	\$ (0.27)	\$ (0.20)		
Other Information:				
Weighted average number of anti-dilutive Series A convertible preferred shares, options and restricted stock ^(a)	59,434,000	5,321,000		

	Three Months Ended		Six Months Ended			
	March 31,		March 31,			
	2024	2023	2024	2023		
Basic Earnings (Loss) per common share						
Numerator:						
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)		
Less: dividends on Series A convertible preferred shares	(8.9)	—	(17.8)	—		
Less: Earnings allocated to Convertible Preferred Shares	(9.0)	—	—	—		
Net income (loss) available to common shareholders	<u>\$ 15.8</u>	<u>\$ (22.0)</u>	<u>\$ (0.5)</u>	<u>\$ (40.9)</u>		
Denominator:						
Weighted average number of common shares outstanding – basic	94,436,000	93,475,000	94,210,000	93,362,000		
Basic earnings (loss) per share	\$ 0.17	\$ (0.23)	\$ (0.01)	\$ (0.44)		
Diluted earnings (loss) per common share						
Numerator:						

Net income (loss) available to common shareholders – diluted	\$ 15.8	\$ (22.0)	\$ (0.5)	\$ (40.9)
Denominator:				
Weighted average number of common shares outstanding – basic	94,436,000	93,475,000	94,210,000	93,362,000
Dilutive effect of:				
Stock compensation awards	1,275,000	—	—	—
Series A convertible preferred stock	—	—	—	—
Weighted average number of common shares outstanding – diluted	<u>95,711,000</u>	<u>93,475,000</u>	<u>94,210,000</u>	<u>93,362,000</u>
Diluted earnings (loss) per share	\$ 0.17	\$ (0.23)	\$ (0.01)	\$ (0.44)
Other Information:				
Weighted average number of anti-dilutive Series A convertible preferred shares, options and restricted stock(a)	55,691,000	5,320,000	57,560,000	5,321,000

(a) Weighted average number of anti-dilutive options is based upon the average closing price of the Company's common stock on the NYSE for the period.

15. Subsequent events

On January 12, 2024, the Company completed the sale of one of its fully owned subsidiaries for total cash consideration of \$51.6. The Maintenance Services operating segment includes the operations of the divested entity, and its results of operations are included in the Consolidated Statement of Operations for the three months ended December 31, 2023 and 2022. We expect to record a gain associated with this transaction which will be included in the company's results for the second quarter of fiscal year 2024. 25

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis supplements our management's discussion and analysis for the year ended September 30, 2023 as contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on November 16, 2023, and presumes that readers have read or have access to such discussion and analysis. The following discussion and analysis should also be read together with the unaudited consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q. This discussion contains forward-looking statements that reflect our plans and strategy for our business, and involve risks **uncertainties** and **other factors outside of the Company's control**. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, as updated by subsequent filings with the Securities and Exchange Commission, for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. You should carefully read "Special Note Regarding Forward-Looking Statements" in this Quarterly Report on Form 10-Q.

Overview

Our Company

We are the largest provider of commercial landscaping services in the United States, with revenues approximately 65 times those of our next largest commercial landscaping competitor. We provide commercial landscaping services ranging from landscape maintenance and enhancements to tree care and landscape development. We operate through a differentiated and integrated national service model which systematically delivers services at the local level by combining our network of over 290 branches with a qualified service partner network. Our branch delivery model underpins our position as a single-source end-to-end landscaping solution provider to our diverse customer base at the national, regional and local levels, which we believe represents a significant competitive advantage. We believe our commercial customer base understands the financial and reputational risk associated with inadequate landscape maintenance and considers our services to be essential and non-discretionary.

Our Segments

We report our results of operations through two reportable segments: Maintenance Services and Development Services. We serve a geographically diverse set of customers through our strategically located network of branches in 35 U.S. states, and, through our qualified service partner network, we are able to efficiently provide nationwide coverage in all 50 U.S. states.

Maintenance Services

Our Maintenance Services segment delivers a full suite of recurring commercial landscaping services in both evergreen and seasonal markets, ranging from mowing, gardening, mulching and snow removal, to more horticulturally advanced services, such as water management, irrigation maintenance, tree care, golf course maintenance and specialty turf maintenance. In addition to contracted maintenance services, we also have a strong track record of providing value-added landscape enhancements. We primarily self-perform our maintenance services through our national branch network, which are route-based in nature. Our maintenance services customers include Fortune 500 corporate campuses and commercial properties, HOAs, public parks, leading international hotels and resorts, airport authorities, municipalities, hospitals and other healthcare facilities, educational institutions, restaurants and retail, and golf courses, among others.

Development Services

Through our Development Services segment, we provide landscape architecture and development services for new facilities and significant redesign projects. Specific services include project design and management services, landscape architecture, landscape installation, irrigation installation, tree moving and installation, pool and water features and sports field services, among others. Our development services are comprised of sophisticated design, coordination and installation of landscapes at some of the most recognizable corporate, athletic and university complexes and showcase highly visible work that is paramount to our customers' perception of our brand as a market leader.

In our Development Services business, we are typically hired by general contractors, with whom we maintain strong relationships as a result of our superior technical and project management capabilities. We believe the quality of our work is also well-regarded by our end-customers, some of whom directly request that their general contractors utilize our services when outsourcing their landscape development projects.

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Components of Our Revenues and Expenses

Net Service Revenues

Maintenance Services

Our Maintenance Services revenues are generated primarily through landscape maintenance services and snow removal services. Landscape maintenance services that are primarily viewed as non-discretionary, such as lawn care, mowing, gardening, mulching, leaf removal, irrigation and tree care, are provided under recurring annual contracts, which typically range from one to three years in duration and are generally cancellable by the customer with 30-90 days' notice. Snow removal services are provided on either fixed fee based contracts or per occurrence contracts. Both landscape maintenance services and snow removal services can also include enhancement services that represent supplemental maintenance or improvement services generally provided under contracts of short duration related to specific services. Revenue for landscape maintenance and snow removal services under fixed fee models is recognized over time using an output based method. Additionally, a portion of our recurring fixed fee landscape maintenance and snow removal services are recorded under the series guidance. The right to invoice practical expedient, defined within Note 3 "Revenue" to our unaudited consolidated financial statements, is generally applied to revenue related to landscape maintenance and snow removal services performed in relation to per occurrence contracts as well as enhancement services. When use of the practical expedient is not appropriate for these contracts, revenue is recognized using a cost-to-cost input method. Fees for contracted landscape maintenance services are typically billed on an equal monthly basis. Fees for fixed fee snow removal services are typically billed on an equal monthly basis during snow season, while fees for time and material or other activity-based snow removal services are typically billed as the services are performed. Fees for enhancement services are typically billed as the services are performed.

Development Services

For Development Services, revenue is primarily recognized over time using the cost-to-cost input method, measured by the percentage of cost incurred to date to the estimated total cost for each contract, which we believe to be the best measure of progress. The full amount of anticipated losses on contracts is recorded as soon as such losses can be estimated. These losses ~~are have been~~ immaterial to current and historical operations, in prior periods. Changes in job performance, job conditions and estimated profitability, including final contract settlements, may result in revisions to costs and revenue and are recognized in the period in which the revisions are determined.

Expenses

Cost of Services Provided

Cost of services provided is comprised of direct costs we incur associated with our operations during a period and includes employee costs, subcontractor costs, purchased materials, and operating equipment and vehicle costs. Employee costs consist of wages and other labor-related expenses, including benefits, workers compensation and healthcare costs, for those employees involved in delivering our services. Subcontractor costs consist of costs relating to our qualified service partner network in our Maintenance Services segment and subcontractors we engage from time to time in our Development Services segment. When our use of subcontractors increases, we may experience incrementally higher costs of services provided. Operating equipment and vehicle costs primarily consist of depreciation related to branch operating equipment and vehicles and related fuel expenses. A large component of our costs are variable, such as labor, subcontractor expense and materials.

Selling, General and Administrative Expense

Selling, general and administrative expense consists of costs incurred related to compensation and benefits for management, sales and administrative personnel, equity-based compensation, branch and office rent and facility operating costs, depreciation expense related to branch and office locations, as well as professional fees, software costs and other miscellaneous expenses. Corporate expenses, including corporate executive compensation, finance, legal and information technology, are included in consolidated **selling**, **Selling**, general and administrative expense and not allocated to the business segments.

Gain on divestiture

Gain on divestiture consists of the realized gain on sale and transaction related expenses from the divestiture of U.S. Lawns on January 12, 2024.

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Amortization Expense

Amortization expense consists of the periodic amortization of intangible assets, including customer relationships, **non-compete agreements** and trademarks, recognized when KKR acquired the Company on December 18, 2013 and in connection with businesses **we have** acquired since December 18, 2013.

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Other (Income)

Other (income) consists primarily of investment gains **and losses** related to investments held in Rabbi **Trust as well as losses on debt extinguishment**. Trust.

Interest Expense, Net

Interest expense, **relates net** **consists** primarily **of interest expense related** to our long-term **debt**, **debt as well as interest income related to our cash and cash equivalents**. See Note 7 "Long-term Debt" in the unaudited consolidated financial statements included under Part I, Item 1, "Financial Statements".

Income Tax Expense (Benefit)

Income tax **expense** (benefit) includes U.S. federal, state and local income taxes. Our effective tax rate differs from the statutory U.S. income tax rate due to the effect of state and local income taxes, tax credits and certain nondeductible expenses. Our effective tax rate may vary from quarter to quarter based on recurring and nonrecurring factors including, but not limited to, the geographical distribution of our pre-tax earnings, changes in the tax rates of different jurisdictions, the availability of tax credits and nondeductible items. Changes in judgment due to the evaluation of new information resulting in the recognition, derecognition or remeasurement of a tax position taken in a prior annual period are recognized separately in the period of the change.

Trends and Other Factors Affecting Our Business

Various trends and other factors affect or have affected our operating results, including:

Seasonality

Our services, particularly in our Maintenance Services segment, have seasonal variability such as increased mulching, flower planting and intensive mowing in the spring, leaf removal and cleanup work in the fall, snow removal services in the winter and potentially minimal mowing during drier summer months. This can drive fluctuations in revenue, costs and cash flows for interim periods.

We have a significant presence in geographies that have a year-round growing season, which we refer to as our evergreen markets. Such markets require landscape maintenance services twelve months per year. In markets that do not have a year-round growing season, which we refer to as our seasonal markets, the demand for our landscape maintenance services decreases during the winter months. Typically, our revenues and net income have been higher in the spring and summer seasons, which correspond with our third and fourth fiscal quarters of our fiscal year ending September 30. The lower level of activity in seasonal markets during our first and second fiscal quarters is partially offset by revenue from our snow removal services. Such seasonality causes our results of operations to vary from quarter to quarter.

Weather Conditions

Weather may impact the timing of performance of landscape maintenance and enhancement services and progress on development projects from quarter to quarter. For example, snow events in the winter, hurricane-related cleanup in the summer and fall, and the effects of abnormally high rainfall or drought in a given market may impact our services. These less predictable weather patterns can impact both our revenues and our costs, especially from quarter to quarter, but also from year to year in some cases. Extreme weather events such as hurricanes and tropical storms can result in a positive impact to our business in the form of increased enhancement services revenues related to cleanup and other services. However, such weather events may also negatively impact our ability to deliver our contracted services or impact the timing of performance.

In our seasonal markets, the performance of our snow removal services is correlated with the amount of snowfall and number of snowfall events in a given season. We benchmark our performance against ten- and thirty-year cumulative annual snowfall averages.

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Acquisitions

In addition to our organic growth, we have grown, and expect to continue to grow, our business through acquisitions in an effort to better service our existing customers and to attract new customers. These acquisitions have allowed us to execute our “strong-on-strong” acquisition strategy in which we focus on increasing our density and leadership positions in existing local markets, entering into attractive new geographic markets and expanding our portfolio of landscape enhancement services and improving technical capabilities in specialized services. As we continue to selectively pursue acquisitions that complement our “strong-on-strong” acquisition strategy, we believe we are the acquirer of choice in the highly fragmented commercial landscaping industry because we offer the ability to leverage our significant size and scale, as well as provide stable and potentially expanding career opportunities for employees of acquired businesses. In accordance with GAAP, the results of the acquisitions we have completed are reflected in our consolidated

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financial statements from the date of acquisition. We incur transaction costs in connection with identifying and completing acquisitions and ongoing integration costs as we integrate acquired companies and seek to achieve synergies. During the **three six** months ended **December 31, 2023** **March 31, 2024**, the Company incurred **\$0.6 million** **\$2.1 million** of integration costs related to acquisitions completed prior to fiscal 2024. While integration costs vary based on factors specific to each acquisition, such costs are primarily comprised of one-time employee retention costs, employee onboarding and training costs, and fleet and uniform rebranding costs, costs and adjustments to performance-based contingent consideration. We typically anticipate integration costs to represent approximately 7%-9% of the acquisition price, and to be incurred within 12 months of acquisition completion.

Goodwill

Goodwill represents the excess of the purchase price over the fair values of the underlying net assets acquired in an acquisition. Goodwill is not amortized, but rather is tested annually for impairment in the fourth quarter of each year, or more frequently if events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

Goodwill is allocated to, and evaluated for impairment at our three identified reporting units. Goodwill is tested for impairment by either performing a qualitative evaluation or a quantitative test. The qualitative evaluation is an assessment of factors to determine whether it is more likely than not that a reporting unit's fair value is less than its carrying amount. We may elect not to perform the qualitative assessment for some or all reporting units and perform the quantitative impairment test. The quantitative goodwill impairment

test requires us to compare the carrying value of the reporting unit's net assets to the fair value of the reporting unit. The Company determined fair values of each of the reporting units using a combination of the income and market multiple approaches. The estimates used in each approach include significant management assumptions, including long-term future growth rates, operating margins, discount rates and future economic and market conditions.

If the fair value exceeds the carrying value, no further evaluation is required, and no impairment loss is recognized. If the carrying amount of a reporting unit, including goodwill, exceeds the estimated fair value, the excess of the carrying value over the fair value is recorded as an impairment loss, the amount of which would not exceed the total amount of goodwill allocated to the reporting unit.

Our methodology for estimating the fair value of our reporting units utilizes a combination of the market and income approaches. The market approach is based on the guideline public company method, which measures the value of the reporting unit through applying valuation multiples of selected guideline public companies to the reporting unit's key operating metrics. The income approach is based on the Discounted Cash Flow ("DCF") method, which is based on the present value of future cash flows. The principal assumptions utilized in the DCF methodology include long-term future growth rates, operating margins, and discount rates. There can be no assurance that our estimates and assumptions regarding forecasted cash flow, long-term future growth rates and operating margins made for purposes of the annual goodwill impairment test will prove to be accurate predictions of the future. We believe the current assumptions and estimates utilized under each approach are both reasonable and appropriate.

Based on our most recent annual analysis as of July 1, 2023, the fair values for all **three of our** identified reporting units exceeded the carrying values, and therefore no indicators of impairment existed for **those three** reporting units; however, the fair value of the Maintenance reporting unit exceeded the carrying value by 4.7%. Since the Maintenance reporting unit fair value did not substantially exceed the carrying value, we may be at risk for an impairment loss in the future if interest rates and market conditions continue to trend unfavorably or if our forecasts assumed in the fair value calculation are not realized. As of **December 31, 2023** **March 31, 2024**, there was **\$1,803.5 million** **\$1,797.7 million** of goodwill recorded related to the Maintenance reporting unit.

Industry and Economic Conditions

We believe the non-discretionary nature of our landscape maintenance services provides us with a fairly predictable recurring revenue model. The perennial nature of the landscape maintenance service sector, as well as its wide range of end users, minimizes the impact of a broad or sector-specific downturn. However, in connection with our enhancement services and development services, when demand for commercial construction declines, demand for landscape enhancement services and development projects may decline. When commercial construction activity rises, demand for landscape enhancement services to maintain green space may also increase.

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This is especially true for new developments in which green space tends to play an increasingly important role. Economic conditions, including rising inflation and fuel prices, as well as rising interest rates, have impacted and may further impact our costs and expenses, and fluctuations in labor markets, may impact our ability to identify, hire and retain employees. Increased labor costs, including recruiting, retention, and overtime expenditures, have and could adversely affect our profitability.

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Results of Operations

The following tables summarize key components of our results of operations for the periods indicated.

(in millions)	Three Months Ended		Three Months Ended		Six Months Ended	
	December 31,		March 31,		March 31,	
	2023	2022	2024	2023	2024	2023
Net service revenues	\$ 626.7	\$ 655.9	\$ 672.9	\$ 650.4	\$ 1,299.6	\$ 1,306.3
Cost of services provided	492.9	508.3	520.9	503.3	1,013.7	1,011.6
Gross profit	133.8	147.6	152.0	147.1	285.9	294.7
Selling, general and administrative expense	129.9	137.6	125.0	138.7	255.0	276.4

(Gain) on divestiture	(43.9)	—	(43.9)	—	
Amortization expense	10.1	11.9	8.7	11.0	18.8
(Loss) income from operations	(6.2)	(1.9)			22.9
Income (loss) from operations	62.2	(2.6)	56.0	(4.6)	
Other (income)	(1.2)	(0.7)	(0.8)	(0.6)	(1.9)
Interest expense	17.1	23.2			
(Loss) before income taxes	(22.1)	(24.4)			
Income tax (benefit)	(5.7)	(5.5)			
Net (loss)	\$ (16.4)	\$ (18.9)			
Interest expense, net	16.0	27.7	33.0	50.9	
Income (loss) before income taxes	47.0	(29.7)	24.9	(54.1)	
Income tax expense (benefit)	13.3	(7.7)	7.6	(13.2)	
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)	
Earnings (Loss) per Share	\$ (0.27)	\$ (0.20)	\$ 0.17	\$ (0.23)	\$ (0.01)
Adjusted EBITDA ⁽¹⁾	\$ 46.7	\$ 48.6	\$ 64.8	\$ 46.8	\$ 111.5
Adjusted Net Income ⁽¹⁾	\$ 3.0	\$ (1.2)	\$ 16.9	\$ (6.7)	\$ 20.0
Cash flows from operating activities	\$ 26.2	\$ (29.6)	\$ 83.2	\$ 84.6	\$ 109.5
Free Cash Flow ⁽¹⁾	\$ 17.3	\$ (55.4)	\$ 72.0	\$ 71.4	\$ 89.4
					15.9

(1) See the "Non-GAAP Financial Measures" section included below for a reconciliation to the most directly comparable GAAP measure.

Three Months Ended December 31, 2023 March 31, 2024 compared to Three Months Ended December 31, 2022 March 31, 2023

Net Service Revenues

Net service revenues for the three months ended December 31, 2023 decreased \$29.2 million March 31, 2024 increased \$22.5 million, or 4.5% 3.5%, to \$626.7 million \$672.9 million, from \$655.9 million \$650.4 million in the 2022 2023 period. The decrease increase was driven by a decrease increases in Maintenance Services revenues of \$40.9 million, partially offset by an increase in \$12.7 million and Development Services revenues of \$11.0 million \$8.8 million as discussed further below in Segment Results.

Gross Profit

Gross profit for the three months ended December 31, 2023 decreased \$13.8 million March 31, 2024 increased \$4.9 million, or 9.3% 3.3%, to \$133.8 million \$152.0 million, from \$147.6 million \$147.1 million in the 2022 2023 period. Gross margin decreased 120 basis points, to 21.3% remained flat at 22.6%, in the three months ended December 31, 2023 March 31, 2024, from 22.5% in and the 2022 comparable 2023 period. The decreases increase in gross profit and gross margin were is driven by the decrease in Maintenance Services increase net service revenues as well as the increase in labor costs in our Development segment associated with the mix of projects relative to the prior year. Partially offsetting this was more efficient management of material costs versus the prior period, described above.

Selling, General and Administrative Expense

Selling, general and administrative expense for the three months ended December 31, 2023 March 31, 2024 decreased \$7.7 million \$13.7 million, or 5.6% 9.9%, to \$129.9 million \$125.0 million, from \$137.6 million \$138.7 million in the 2022 2023 period. As a percentage of revenue, Selling, general and administrative expense decreased 30 270 basis points for the three months ended December 31, 2023 March 31, 2024 to 20.7% 18.6%, from 21.0% 21.3% in the 2022 2023 period. The decrease was driven principally by decreases in compensation-related lower labor related costs offset by an increase in business transformation and integration costs during professional fees as a result of the period. Company's cost management initiatives.

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Gain on divestiture

Gain on divestiture for the three months ended March 31, 2024 was \$43.9 million which consisted of the realized gain on sale and transaction related expenses from the divestiture of U.S. Lawns on January 12, 2024.

Amortization Expense

Amortization expense for the three months ended December 31, 2023 March 31, 2024 decreased \$1.8 million \$2.3 million, or 15.1% 20.9%, to \$10.1 million \$8.7 million, from \$11.9 million \$11.0 million in the 2022 2023 period. The decrease was principally due to a \$1.0 million decrease in amortization expense for intangible assets recognized in connection with our acquired businesses subsequent to the ValleyCrest Acquisition and a \$0.8 million \$0.9 million decrease in the amortization of historical intangible assets recognized in connection with the KKR Acquisition and the ValleyCrest Acquisition, based on the pattern consistent with expected future cash flows calculated at that time, combined with a \$1.3 million decrease in amortization expense for intangible assets recognized in connection with our acquired businesses subsequent to the time of acquisition.

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ValleyCrest Acquisition.

Other (Income)

Other income was \$1.2 million \$0.8 million for the three months ended December 31, 2023 March 31, 2024 compared to expense of \$0.7 million \$0.6 million in the 2022 2023 period. The increase of \$0.5 million \$0.2 million was driven principally by the change in value of investments held in the Rabbi Trust.

Interest Expense, Net

Interest expense, net for the three months ended December 31, 2023 March 31, 2024 decreased \$6.1 million \$11.7 million, or 26.3% 42.2%, to \$17.1 million \$16.0 million, from \$23.2 million \$27.7 million in the 2022 2023 period. The decrease was driven principally by lower interest expense as a result of the decrease in the long term long-term debt balance partially offset by combined with an increase in rates, interest income associated with the increase in cash and cash equivalents balance.

Income Tax Expense (Benefit)

For the three months ended December 31, 2023 March 31, 2024, Income tax (benefit) expense was \$5.7 million \$13.3 million, compared to \$5.5 million income tax benefit of \$7.7 million in the 2022 2023 period. The change increase was primarily attributable to the reduction increase in expense related to pre-tax book income from the vesting gain on divestiture of restricted stock units that was recorded discretely in U.S. Lawns as well as the current period distribution of pre-tax earnings across legal entities.

Net Income (Loss)

Net (loss) for For the three months ended December 31, 2023 increased \$2.5 million March 31, 2024, Net income was \$33.7 million, compared to \$16.4 million, from \$18.9 million Net loss of \$22.0 million in the 2022 2023 period due to the changes noted above. Net income as a percentage of revenue was 5.0% for the three months ended March 31, 2024. Net loss as a percentage of revenue was 2.6% 3.4% for the three months ended December 31, 2023 compared to 2.9% in the 2022 period.

Dividends on Series A Convertible Preferred Shares

For the three months ended December 31, 2023 Dividends on Series A Convertible Preferred Shares were \$8.9 million March 31, 2023. The dividends on the Series A Convertible Preferred Stock were paid in kind, which increased the aggregate liquidation preference of the Series A Preferred Stock by the same amount.

Adjusted EBITDA

Adjusted EBITDA decreased \$1.9 million increased \$18.0 million for the three months ended December 31, 2023 March 31, 2024, to \$46.7 million \$64.8 million, from \$48.6 million \$46.8 million in the 2022 2023 period. Adjusted EBITDA as a percentage of revenue was 7.5% 9.6% and 7.4% 7.2% for the three months ended December 31, 2023 March 31, 2024 and 2022 2023, respectively. The decrease increase in Adjusted EBITDA was primarily driven by an decrease increase of \$8.5 million \$14.8 million, or 16.8% 28.6% in Maintenance Services Segment Adjusted EBITDA, partially offset by combined with an increase of \$3.1 million \$1.3 million, or 18.8% 9.9% in Development Services Segment Adjusted EBITDA, as discussed further below in Segment Results.

Adjusted Net Income (Loss)

Adjusted net income Net Income for the three months ended December 31, 2023 March 31, 2024 increased \$4.2 million \$23.6 million to \$3.0 million \$16.9 million, from \$(1.2) million a loss of \$6.7 million in the 2022 2023 period due to the changes noted above.

Six Months Ended March 31, 2024 compared to Six Months Ended March 31, 2023

Net Service Revenues

Net service revenues for the six months ended March 31, 2024 decreased \$6.7 million, or 0.5%, to \$1,299.6 million, from \$1,306.3 million in the 2023 period. The decrease was driven by a decrease in Maintenance Services revenues of \$28.3 million which was partially offset by an increase in Development Services revenues of \$19.8 million as discussed further below in Segment Results.

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Gross Profit

Gross profit for the six months ended March 31, 2024 decreased \$8.8 million, or 3.0%, to \$285.9 million, from \$294.7 million in the 2023 period. Gross margin decreased 60 basis points, to 22.0%, in the six months ended March 31, 2024, from 22.6% in the 2023 period. The decreases in gross profit and gross margin were driven by the decrease in Maintenance Services revenues as well as the increase in labor costs associated with the mix of projects relative to the prior year. Partially offsetting this was a reduction of material costs and equipment-related costs versus the prior period, associated with the mix of projects.

Selling, General and Administrative Expense

Selling, general and administrative expense for the six months ended March 31, 2024 decreased \$21.4 million, or 7.7%, to \$255.0 million, from \$276.4 million in the 2023 period. As a percentage of revenue, Selling, general and administrative expense decreased 160 basis points for the six months ended March 31, 2024 to 19.6%, from 21.2% in the 2023 period. The decrease was driven principally by lower labor-related costs resulting from the Company's cost management initiatives, offset by an increase in business transformation and integration costs during the period.

Gain on divestiture

Gain on divestiture for the six months ended March 31, 2024 was \$43.9 million which consisted of the realized gain on sale and transaction related expenses from the divestiture of U.S. Lawns on January 12, 2024.

Amortization Expense

Amortization expense for the six months ended March 31, 2024 decreased \$4.1 million, or 17.9%, to \$18.8 million, from \$22.9 million in the 2023 period. The decrease was due to a \$2.0 million decrease in the amortization of historical intangible assets recognized in connection with the KKR Acquisition and the ValleyCrest Acquisition, based on the pattern consistent with expected future cash flows calculated at that time, combined with a \$2.1 million decrease in amortization expense for intangible assets recognized in connection with our acquired businesses subsequent to the ValleyCrest Acquisition.

Other Income

Other income was \$1.9 million for the six months ended March 31, 2024 compared to income of \$1.4 million in the 2023 period. The increase of \$0.5 million was driven principally by changes in the value of investments held in the Rabbi Trust.

Interest Expense, net

Interest expense for the six months ended March 31, 2024 decreased \$17.9 million, or 35.2%, to \$33.0 million, from \$50.9 million in the 2023 period. The decrease was driven principally by lower interest expense as a result of the decrease in the long-term debt balance combined with an increase in interest income associated with the increase in the cash and cash equivalents balance.

Income Tax Expense (Benefit)

Income tax expense for the six months ended March 31, 2024, was \$7.6 million, compared to income tax benefit of \$13.2 million in the 2023 period. The increase was primarily attributable to the increase in pre-tax book income from the gain on divestiture of the U.S. Lawns subsidiary as well as the distribution of pre-tax earnings across legal entities.

Net Income (Loss)

For the six months ended March 31, 2024, Net income was \$17.3 million, compared to net loss of \$40.9 million in the 2023 period due to the changes noted above. Net income as a percentage of revenue was 1.3% for the six months ended March 31, 2024 compared to net loss as a percentage of revenue of 3.1% in the 2023 period.

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Adjusted EBITDA

Adjusted EBITDA increased \$16.2 million for the six months ended March 31, 2024, to \$111.5 million, from \$95.3 million in the 2023 period. Adjusted EBITDA as a percentage of revenue was 8.6% and 7.3% for the six months ended March 31, 2024 and 2023, respectively. The increase in Adjusted EBITDA was primarily driven by an increase of \$6.3 million, or 6.2% in Maintenance Services Segment Adjusted EBITDA, combined with an increase of \$4.4 million, or 14.9% in Development Services Segment Adjusted EBITDA, as discussed further below in Segment Results.

Adjusted Net Income (Loss)

Adjusted Net Income for the six months ended March 31, 2024 increased \$28.0 million to \$20.0 million, from Adjusted Net Loss of \$8.0 million in the 2023 period due to the changes noted above.

Non-GAAP Financial Measures

In addition to our GAAP financial measures, we review various non-GAAP financial measures including Adjusted EBITDA, Adjusted Net Income (Loss), Adjusted Earnings (Loss) per Share ("Adjusted EPS") and Free Cash Flow.

We believe that Adjusted EBITDA, Adjusted Net Income (Loss) and Adjusted EPS are helpful supplemental measures to assist us and investors in evaluating our operating results as they exclude certain items whose fluctuations from period to period do not necessarily correspond to changes in the operations of our business. Adjusted EBITDA represents net income (loss) before interest, taxes, depreciation, amortization and certain non-cash, non-recurring and other adjustment items. Adjusted Net Income (Loss) is defined as net income (loss) including interest and depreciation and excluding other items used to calculate Adjusted EBITDA and further adjusted for the tax effect of these exclusions and the removal of the discrete tax items. Adjusted EPS is defined as Adjusted Net Income (Loss) divided by the Adjusted Weighted Average Number of Common Shares Outstanding. We define Adjusted Weighted Average Number of Common Shares Outstanding as the weighted average number of common shares outstanding used in the calculation of basic earnings per share plus shares of common stock related to the Series A Preferred Stock on an as-converted basis, assumed to be converted for the entire period. We believe that the adjustments applied in presenting Adjusted EBITDA, Adjusted Net Income (Loss) and Adjusted EPS

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are appropriate to provide additional information to investors about certain material non-cash items and about non-recurring items that we do not expect to continue at the same level in the future.

We believe Free Cash Flow is a helpful supplemental measure to assist us and investors in evaluating our liquidity. Free Cash Flow represents cash flows from operating activities less capital expenditures, net of proceeds from the sale of property and equipment. We believe Free Cash Flow is useful to provide additional information to assess our ability to pursue business opportunities and investments and to service our debt. Free Cash Flow has limitations as an analytical tool, including that it does not account for our future contractual commitments and excludes investments made to acquire assets under finance leases and required debt service payments.

Adjusted EBITDA, Adjusted Net Income (Loss), Adjusted EPS and Free Cash Flow are not recognized terms under GAAP and should not be considered as an alternative to net income (loss) as a measure of financial performance or cash flows provided by operating activities as a measure of liquidity, or any other performance measure derived in accordance with GAAP. The presentations of these measures have limitations as analytical tools and should not be considered in isolation, or as a substitute for analysis of our results as reported under GAAP. Because not all companies use identical calculations, the presentations of these measures may not be comparable to the same or other similarly titled measures of other companies and can differ significantly from company to company.

Set forth below are the reconciliations of net income (loss) to Adjusted EBITDA and Adjusted Net Income (Loss), and cash flows from operating activities to Free Cash Flow. Adjusted EPS is defined as Adjusted Net Income (Loss) (shown below) divided by the Adjusted Weighted Average Number of Common Shares Outstanding for the period used in the calculation of basic EPS which is presented in Note 14 "Earnings (Loss) Per Share of Common Stock" in the Notes to our unaudited consolidated financial statements.

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(in millions)	Three Months Ended			
	December 31,			
	2023	2022		
Adjusted EBITDA				
Net (loss)	\$ (16.4)	\$ (18.9)		
Plus:				
Interest expense, net	17.1	23.2		
Income tax (benefit)	(5.7)	(5.5)		
Depreciation expense	25.6	27.1		
Amortization expense	10.1	11.9		
Business transformation and integration costs (a)	10.7	4.7		
Equity-based compensation (b)	5.3	5.7		
COVID-19 related expenses (c)	—	0.4		
Adjusted EBITDA	46.7	48.6		
Adjusted Net Income (Loss)				
Net (loss)	\$ (16.4)	\$ (18.9)		
Plus:				
Amortization expense	10.1	11.9		
Business transformation and integration costs (a)	10.7	4.7		
Equity-based compensation (b)	5.3	5.7		
COVID-19 related expenses (c)	—	0.4		
Income tax adjustment (d)	(6.7)	(5.0)		
Adjusted Net Income (Loss)	3.0	(1.2)		
Free Cash Flow				
Cash flows provided by operating activities	\$ 26.2	\$ (29.6)		
Minus:				
Capital expenditures	10.1	27.2		
Plus:				
Proceeds from sale of property and equipment	1.2	1.4		
Free Cash Flow	17.3	(55.4)		
(in millions)	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2024	2023	2024	2023
Adjusted EBITDA				
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)
Plus:				
Interest expense, net	16.0	27.7	33.0	50.9
Income tax expense (benefit)	13.3	(7.7)	7.6	(13.2)
Depreciation expense	26.1	27.4	51.7	54.5
Amortization expense	8.7	11.0	18.8	22.9
Business transformation and integration costs (a)	6.1	4.1	16.9	8.7
Gain on divestiture (b)	(43.9)	—	(43.9)	—
Equity-based compensation (c)	4.8	6.3	10.1	12.0
COVID-19 related expenses (d)	—	—	—	0.4
Adjusted EBITDA	64.8	46.8	111.5	95.3
Adjusted Net Income (Loss)				
Net income (loss)	\$ 33.7	\$ (22.0)	\$ 17.3	\$ (40.9)

Plus:					
Amortization expense	8.7	11.0	18.8	22.9	
Business transformation and integration costs (a)	6.1	4.1	16.9	8.7	
Gain on divestiture (b)	(43.9)	—	(43.9)	—	
Equity-based compensation (c)	4.8	6.3	10.1	12.0	
COVID-19 related expenses (d)	—	—	—	0.4	
Income tax adjustment (e)	7.5	(6.1)	0.8	(11.1)	
Adjusted Net Income (Loss)	\$ 16.9	\$ (6.7)	\$ 20.0	\$ (8.0)	
Free Cash Flow					
Cash flows provided by operating activities	\$ 83.2	\$ 84.6	\$ 109.5	\$ 55.0	
Minus:					
Capital expenditures	12.6	15.5	22.7	42.7	
Plus:					
Proceeds from sale of property and equipment	1.4	2.3	2.6	3.6	
Free Cash Flow	\$ 72.0	\$ 71.4	\$ 89.4	\$ 15.9	

(a) Business transformation and integration costs consist of (i) severance and related costs; (ii) business integration costs and (iii) information technology infrastructure, transformation costs, and other.

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(in millions)	Three Months Ended		Three Months Ended		Six Months Ended	
	December 31,		March 31,		March 31,	
	2023	2022	2024	2023	2024	2023
Severance and related costs	\$ 2.5	\$ 0.1	\$ 3.7	\$ 1.8	\$ 6.2	\$ 1.9
Business integration (e)(f)	0.6	2.7	(1.5)	-	(0.9)	2.5
IT infrastructure, transformation, and other (f)(g)	7.6	1.9	3.9	2.3	11.6	4.3
Business transformation and integration costs	\$ 10.7	\$ 4.7	\$ 6.1	\$ 4.1	\$ 16.9	\$ 8.7

(b) Represents the realized gain on sale and transaction related expenses from the divestiture of U.S. Lawns on January 12, 2024.

(c) Represents equity-based compensation expense and related taxes recognized for equity incentive plans outstanding.

(d) Represents expenses related to the Company's response to the COVID-19 pandemic, principally temporary and incremental salary and related expenses, personal protective equipment, clean supply purchases, and other.

(e) Represents the tax effect of pre-tax items excluded from Adjusted Net Income (Loss) and the removal of the applicable discrete tax items, which collectively result in a reduction of income tax (benefit). The tax effect of pre-tax items excluded from Adjusted Net Income (Loss) is computed using the statutory rate related to the jurisdiction that was impacted by the adjustment after taking account the impact of permanent differences and valuation allowances. Discrete tax items include tax impact of the gain on divestiture of U.S. Lawns, changes in laws or rates, changes in uncertain positions relating to prior years and changes in valuation allowances.

(in millions)	Three Months Ended	
	December 31,	
	2023	2022
Tax impact of pre-tax income adjustments	7.4	\$ 6.0
Discrete tax items	(0.7)	(1.0)
Income tax adjustment	\$ 6.7	\$ 5.0

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(in millions)	Three Months Ended				Six Months Ended			
	March 31,				March 31,			
	2024	2023	2024	2023	2024	2023	2024	2023
Tax impact of pre-tax income adjustments	4.8	\$ 6.8	\$ 12.2	\$ 12.8				
Discrete tax items	(12.3)	(0.7)	(13.0)	(1.7)				
Income tax adjustment	<u>\$ (7.5)</u>	<u>\$ 6.1</u>	<u>\$ (0.8)</u>	<u>\$ 11.1</u>				

(e) (f) Represents isolated expenses specifically related to the integration of acquired companies such as one-time employee retention costs, employee onboarding and training costs, and fleet and rebranding costs, and adjustments to performance based contingent consideration. The Company excludes Business integration costs from the measures disclosed above since such expenses vary in amount due to the number of acquisitions and size of acquired companies as well as factors specific to each acquisition, and as a result lack predictability as to occurrence and/or timing, and create a lack of comparability between periods.

(f) (g) Represents expenses related to distinct initiatives, typically significant enterprise-wide changes. Such expenses are excluded from the measures disclosed above since such expenses vary in amount based on occurrence as well as factors specific to each of the activities, are outside of the normal operations of the business, and create a lack of comparability between periods.

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Segment Results

We classify our business into two segments: Maintenance Services and Development Services. Our corporate operations are not allocated to the segments and are not discussed separately as any results that had a significant impact on operating results are included in the consolidated results discussion above.

We evaluate the performance of our segments on Net service revenues, Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin (Segment Adjusted EBITDA as a percentage of Net service revenues). Segment Adjusted EBITDA is indicative of operational performance and ongoing profitability. Our management closely monitors Segment Adjusted EBITDA to evaluate past performance and identify actions required to improve profitability.

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Segment Results for the Three Months Ended December 31, 2023 March 31, 2024 and 2022

The following tables present Net service revenues, Segment Adjusted EBITDA, and Segment Adjusted EBITDA Margin for each of our segments for the three months ended March 31, 2024 and 2023. Changes in Segment Adjusted EBITDA Margin are shown in basis points, or bps.

Maintenance Services Segment Results

(in millions)	Three Months Ended			Percent Change	
	December 31,		2023 vs. 2022		
	2023	2022			
Net Service Revenues	\$ 442.3	\$ 483.2	(8.5)%		
Segment Adjusted EBITDA	\$ 42.0	\$ 50.5	(16.8)%		
Segment Adjusted EBITDA Margin	9.5%	10.5%	(100) bps		

(in millions)	Three Months Ended			Percent Change	
	March 31,		2024 vs. 2023		
	2024	2023			
Net Service Revenues	\$ 510.5	\$ 497.8	2.6%		

Segment Adjusted EBITDA	\$ 66.5	\$ 51.7	28.6 %
Segment Adjusted EBITDA Margin	13.0 %	10.4 %	260 bps

Maintenance Services Net Service Revenues

Maintenance Services net service revenues for the three months ended December 31, 2023 decreased March 31, 2024 increased by \$40.9 million \$12.7 million, or 8.5% 2.6%, from the 2022 2023 period. The increase was principally driven by a \$34.3 million increase in snow removal services revenue, decreased \$22.1 million, primarily due to lower snowfall relative to in the prior period¹. Commercial landscaping services decreased \$18.8 million Partially offsetting this was a decrease of \$21.6 million, or 4.5% 6.0%, largely in underlying commercial landscape services, underpinned by a decline in our strategic reductions of non-core businesses and reduced ancillary services business services.

Maintenance Services Segment Adjusted EBITDA

Segment Adjusted EBITDA for the three months ended December 31, 2023 decreased March 31, 2024 increased by \$8.5 million \$14.8 million to \$42.0 million \$66.5 million from \$50.5 million \$51.7 million in the 2022 2023 period. Segment Adjusted EBITDA Margin decreased 100 increased 260 basis points, to 9.5% 13.0%, in the three months ended December 31, 2023 March 31, 2024, from 10.5% 10.4% in the 2022 2023 period. The decreases increases in Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin were principally driven by the decreases increase in net service revenues described above partially offset by decreased labor-related costs.

Development Services Segment Results

(in millions)	Three Months Ended			Percent Change	
	December 31,		2022		
	2023	2023 vs. 2022			
Net Service Revenues	\$ 185.4	\$ 174.4	18.8 %	6.3 %	
Segment Adjusted EBITDA	\$ 19.6	\$ 16.5	110 bps	18.8 %	
Segment Adjusted EBITDA Margin	10.6 %	9.5 %			

Development Services Net Service Revenues

Development Services net service revenues for and lower labor costs resulting from the three months ended December 31, 2023 increased \$11.0 million, or 6.3%, compared to the 2022 period. The increase was principally driven by an increase in Development Services project volumes of \$11.0 million.

Development Services Segment Adjusted EBITDA

Segment Adjusted EBITDA for the three months ended December 31, 2023 increased \$3.1 million, to \$19.6 million, compared to the 2022 period. Segment Adjusted EBITDA Margin increased 110 basis points, to 10.6% for the quarter from 9.5% in the 2022 period. The increases in Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin were primarily driven by the increase in net service revenues described above, coupled with savings primarily from Company's cost management initiatives.

¹ As defined by the National Oceanic Atmospheric Administration, U.S. Department of Commerce ("NOAA") for the Company's footprint during the respective three-month periods

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Development Services Segment Results

(in millions)	Three Months Ended			Percent Change	
	March 31,		2023		
	2024	2024 vs. 2023			
Net Service Revenues	\$ 164.4	\$ 155.6	5.7 %		
Segment Adjusted EBITDA	\$ 14.4	\$ 13.1	9.9 %		
Segment Adjusted EBITDA Margin	8.8 %	8.4 %	40 bps		

Development Services Net Service Revenues

Development Services net service revenues for the three months ended March 31, 2024 increased \$8.8 million, or 5.7%, compared to the 2023 period. The increase was driven by an increase in Development Services project volumes.

Development Services Segment Adjusted EBITDA

Segment Adjusted EBITDA for the three months ended March 31, 2024 increased \$1.3 million, to \$14.4 million, compared to the 2023 period. Segment Adjusted EBITDA Margin increased 40 basis points, to 8.8% for the three months ended March 31, 2024, from 8.4% in the 2023 period. The increases in Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin were primarily driven by the increase in revenues described above.

Segment Results for the Six Months Ended March 31, 2024 and 2023

The following tables present Net service revenues, Segment Adjusted EBITDA, and Segment Adjusted EBITDA Margin for each of our segments for the six months ended March 31, 2024 and 2023. Changes in Segment Adjusted EBITDA Margin are shown in basis points, or bps.

Maintenance Services Segment Results

(in millions)	Six Months Ended			Percent Change	
	March 31,		2023		
	2024	2023			
Net Service Revenues	\$ 952.8	\$ 981.1		(2.9)%	
Segment Adjusted EBITDA	\$ 108.5	\$ 102.2		6.2%	
Segment Adjusted EBITDA Margin	11.4%	10.4%		100 bps	

Maintenance Services Net Service Revenues

Maintenance Services net service revenues for the six months ended March 31, 2024 decreased by \$28.3 million, or 2.9%, from the 2023 period. The decrease was principally driven by a \$40.4 million, or 5.2%, decrease in underlying commercial landscape services, largely underpinned by a decline in our Ancillary services business. This was partially offset by a \$12.1 million increase in snow removal services revenue, primarily due to higher snowfall than in the prior period¹.

Maintenance Services Segment Adjusted EBITDA

Segment Adjusted EBITDA for the six months ended March 31, 2024 increased by \$6.3 million to \$108.5 million from \$102.2 million in the 2023 period. Segment Adjusted EBITDA Margin increased 100 basis points, to 11.4%, in the six months ended March 31, 2024, from 10.4% in the 2023 period. The increases in Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin were principally driven by lower labor costs resulting from the Company's cost management initiatives partially offset by the decreased in Maintenance Services Segment revenue described above.

¹ As defined by the National Oceanic Atmospheric Administration, U.S. Department of Commerce ("NOAA") for the Company's footprint during the respective three-month periods

Development Services Segment Results

(in millions)	Six Months Ended			Percent Change	
	March 31,		2023		
	2024	2023			
Net Service Revenues	\$ 349.7	\$ 329.9		6.0%	
Segment Adjusted EBITDA	\$ 34.0	\$ 29.6		14.9%	
Segment Adjusted EBITDA Margin	9.7%	9.0%		70 bps	

Development Services Net Service Revenues

Development Services net service revenues for the six months ended March 31, 2024 increased \$19.8 million, or 6.0%, compared to the 2023 period. The increase was principally driven by an increase in Development Services project volumes.

Development Services Segment Adjusted EBITDA

Segment Adjusted EBITDA for the six months ended March 31, 2024 increased \$4.4 million, to \$34.0 million, compared to the 2023 period. Segment Adjusted EBITDA Margin increased 70 basis points, to 9.7% for the period from 9.0% in the 2023 period. The increases in Segment Adjusted EBITDA and Segment Adjusted EBITDA Margin were primarily driven by the increase in revenues described above coupled with savings primarily from the Company's cost management initiatives.

Liquidity and Capital Resources

Liquidity

Our principal sources of liquidity are existing cash and cash equivalents, cash generated from operations and borrowings under the Credit Agreement and the Receivables Financing Agreement. Our principal uses of cash are to provide working capital, meet debt service requirements, fund capital expenditures and finance strategic plans, including acquisitions and share repurchases under the share repurchase program announced in December 2021. We may also seek to finance capital expenditures under finance leases or other debt arrangements that provide liquidity or favorable borrowing terms. We continue to consider acquisition opportunities, but the size and timing of any future acquisitions and the related potential capital requirements cannot be predicted. While we have in the past financed certain acquisitions with internally generated cash, in the event that suitable businesses are available for acquisition upon acceptable terms, we may obtain all or a portion of the necessary financing through the incurrence of additional long-term borrowings.

Based on our current level of operations and available cash, we believe our cash flow from operations, together with availability under the Revolving Credit Facility under the Credit Agreement and the Receivables Financing Agreement, will provide sufficient liquidity to fund our current obligations, projected working capital requirements, debt service requirements and capital spending requirements for the next twelve months.

A substantial portion of our liquidity needs arise from debt service requirements, and from the ongoing cost of operations, working capital and capital expenditures.

(in millions)	December 31,		September 30,		March 31,		September 30,	
	2023	2023	2023	2024	2023	2023	2023	2023
Cash and cash equivalents	\$ 64.5		\$ 67.0		\$ 177.3		\$ 67.0	
Long-term debt		879.8		888.1		880.4		888.1
Total debt	\$ 879.8		\$ 888.1		\$ 880.4		\$ 888.1	

The Company is party to the Credit Agreement, a five-year revolving credit facility that, pursuant to the Amendment Agreement, currently matures on April 22, 2027 (the "Revolving Credit Facility") and, through a wholly-owned subsidiary, a receivables financing agreement dated April 28, 2017 (as amended, the "Receivables Financing Agreement"). Each of the Company's credit facilities bear interest based in-part on a secured overnight financing rate.

We can increase the borrowing availability under the Credit Agreement or increase the term loans outstanding under the Credit Agreement by up to \$303.0 million, in the aggregate, in the form of additional commitments under the Revolving Credit Facility and/or incremental term loans under the Credit Agreement, or in the form of other indebtedness in lieu thereof, plus an additional amount so long as we do not exceed a specified senior secured leverage ratio and, in the case of second lien indebtedness, a specified senior secured leverage ratio. We can incur such additional secured or other unsecured indebtedness under the Credit Agreement if certain specified conditions are met. Our liquidity requirements are significant primarily due to debt service requirements. See Note 7 "Long-term Debt" to our unaudited consolidated financial statements included under Part I, Item 1, "Financial Statements".

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The Company is party to the Investment Agreement dated August 28, 2023, pursuant to which the Company issued and sold, in a private placement, an aggregate of 500,000 shares of the Company's Series A Convertible Preferred Stock, for an aggregate purchase price of \$500.0 million. The Series A Convertible Preferred Stock is entitled to dividends at a rate of 7.0% per annum, compounding quarterly, paid in kind or paid in cash, at the Company's election.

Our business may not generate sufficient cash flows from operations or future borrowings may not be available to us under our Revolving Credit Facility or the Receivables Financing Agreement in an amount sufficient to enable us to pay our indebtedness, or to fund our other liquidity needs. Our ability to do so depends on, among other factors, prevailing economic conditions, many of which are beyond our control. In addition, upon the occurrence of certain events, such as a change in control, we could be required to repay or refinance our indebtedness. We may not be able to refinance any of our indebtedness, including the Series B Term Loan under the Credit Agreement, on commercially reasonable terms or at all. Any future acquisitions, joint ventures, or other similar transactions may require additional capital and there can be no assurance that any such capital will be available to us on acceptable terms or at all.

Cash Flows

Information about our cash flows, by category, is presented in our statements of cash flows and is summarized below:

(in millions)	Three Months Ended		Six Months Ended	
	December 31,	2023	March 31,	2024

Operating activities	\$ 26.2	\$ (29.6)	\$ 109.5	\$ 55.0
Investing activities	\$ (8.6)	\$ (35.0)	\$ 32.3	\$ (51.8)
Financing activities	\$ (20.1)	\$ 66.9	\$ (31.5)	\$ (12.3)
Free Cash Flow ⁽¹⁾	\$ 17.3	\$ (55.4)	\$ 89.4	\$ 15.9

⁽¹⁾ See "Non-GAAP Financial Measures" above for a reconciliation to the most directly comparable GAAP measure.

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Cash Flows provided by Operating Activities

Net cash provided by (used in) operating activities for the **three** six months ended **December 31, 2023** **March 31, 2024** increased **\$55.8 million** **\$54.5 million**, to **\$26.2 million** **\$109.5 million**, from a cash use of **\$29.6 million** **\$55.0 million** in the **2022** **2023** period. This increase was due to increases in cash provided by accounts receivable and unbilled and deferred **revenue**. **revenue and an increase in net income**. This was partially offset by a **decrease in cash provided by other operating assets** and an increase in cash used by accounts payable and other operating **liabilities**, and other operating assets **liabilities**.

Cash Flows **used in** provided (used) by Investing Activities

Net cash used in investing activities **decreased \$26.4 million** **increased \$84.1 million** to **\$8.6 million** **an inflow \$32.3 million** for the **three** six months ended **December 31, 2023** **March 31, 2024** from **\$35.0 million** **an outflow of \$51.8 million** in the **2022** **2023** period. The **decrease** **increase** was **principally** driven by **proceeds of \$51.6 million** from the **divestiture of U.S. Lawns**, combined with a **\$20.0 million** **decrease of \$17.1 million** in capital expenditures and a **\$13.8 million** **decrease of \$10.0 million** in cash used for acquisitions in comparison to the prior period.

Cash Flows (used) **provided** by Financing Activities

Net cash flows used in financing activities of **\$20.1 million** **\$31.5 million** for the **three** six months ended **December 31, 2023** **March 31, 2024** included **repayments of finance lease obligations of \$15.5 million**, **repayments of our Receivables Financing Agreement of \$9.5 million**, **repayments and contingent business acquisition payments of finance lease obligations of \$7.5 million** and **repurchases of common stock and distributions of \$2.5 million** **\$4.7 million**.

Free Cash Flow

Free Cash Flow increased **\$72.7 million** **\$73.5 million** to **an inflow of \$17.3 million** **\$89.4 million** for the **three** six months ended **December 31, 2023** **March 31, 2024** from **an outflow of \$55.4 million** **\$15.9 million** in the **2022** **2023** period. The increase in Free Cash Flow was due to an increase in net cash provided by operating activities coupled with a decrease in cash used for capital expenditures, each as described above.

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Working Capital

(in millions)	December 31, 2023		September 30, 2023		March 31, 2024		September 30, 2023	
	2023	2024	2023	2024	2023	2024	2023	2024
Net Working Capital:								
Current assets	\$ 690.9	\$ 742.1	\$ 798.6	\$ 742.1				
Less: Current liabilities	421.2	466.7	477.2	466.7				
Net working capital	\$ 269.7	\$ 275.4	\$ 321.4	\$ 275.4				

Net working capital is defined as current assets less current liabilities. Net working capital **decreased \$5.7 million** **increased \$46.0 million** to **\$269.7 million** **\$321.4 million** at **December 31, 2023** **March 31, 2024**, from **\$275.4 million** at September 30, 2023, primarily driven by **an increase in cash and cash equivalents of \$110.3 million** coupled with a

decrease in accrued expenses and other current liabilities of \$15.8 million. This was partially offset by an increase in deferred revenue of \$35.3 million, combined with a decrease in unbilled revenue of \$35.7 million coupled with \$31.3 million and a decrease in accounts receivable of \$23.4 million and an increase in deferred revenue of \$22.7 million. This was partially offset by a decrease in accrued expense and other current assets of \$50.7 million coupled with an increase in other current assets of \$10.4 million \$21.5 million.

Description of Indebtedness

As of **December 31, 2023** **March 31, 2024**, we were in compliance with all of our debt covenants and no event of default has occurred or was ongoing. See Note 7 "Long-term Debt" to our unaudited consolidated financial statements included under Part I, Item 1, "Financial Statements".

Contractual Obligations and Commercial Commitments

As of **December 31, 2023** **March 31, 2024**, there were no material changes outside the ordinary course of business in our contractual obligations and commercial commitments from those reported as of September 30, 2023 in our Annual Report on Form 10-K.

Critical Accounting Policies and Estimates

Management has evaluated the accounting policies used in the preparation of the Company's consolidated financial statements and related notes and believe those policies to be reasonable and appropriate. Certain of these accounting policies require the application of significant judgment by management in selecting appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on historical experience, trends in the industry,

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information provided by customers and information available from other outside sources, as appropriate. The most significant areas involving management judgments and estimates may be found in the Annual Report on Form 10-K, in the "Critical Accounting Policies and Estimates" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations." There have been no material changes to our critical accounting policies as compared to the critical accounting policies described in the Annual Report on Form 10-K for the year ended September 30, 2023.

Recently Issued Accounting Policies

The information set forth in Note 2 "Recent Accounting Pronouncements" to our unaudited consolidated financial statements under Part I, Item 1, "Financial Statements" is incorporated herein by reference.

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Item 3. Quantitative and Qualitative Disclosures About Market Risk.

For quantitative and qualitative disclosures about market risk, see "Item 7A. Quantitative and Qualitative Disclosure of Market Risk" in the Annual Report on Form 10-K for the fiscal year ended September 30, 2023.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and our Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

In accordance with Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision of our CEO and our CFO, the effectiveness of disclosure controls and procedures as of **December 31, 2023** **March 31, 2024**. Based on this evaluation, our CEO and our CFO concluded that our disclosure controls and procedures were effective as of **December 31, 2023** **March 31, 2024** at a reasonable assurance level.

Changes in Internal Control over Financial Reporting

There has not been any change in our internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

The information set forth in Note 11 "Commitments and Contingencies" to our Condensed Consolidated Financial Statements under Part I, Item 1, "Financial Statements," is incorporated herein by reference.

Item 1A. Risk Factors.

There have been no material changes to the risk factors included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, as filed with the SEC on November 16, 2023.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds, and Issuer Purchases of Equity Securities. Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

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Item 6. Exhibits.

The following is a list of all exhibits filed or furnished as part of this report:

Exhibit No.	Description
3.1	Third Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 2, 2018).
3.2	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on March 7, 2023).
3.3	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on July 2, 2018).
3.4	Certificate of Designations of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on August 28, 2023).
10.1*	Sixth Amend ment to the Purchas e 10.1† Transition Services and Sale Separation Agreement, and Waiver, dated as of December 29, 2023 effective February 27, 2024, by and among the Company, BrightView Landscapes, LLC as Servicer and an Originator, U.S. Lawns, Inc. the as an Originator, BrightView Chargers, Inc. as an Originator, various parties listed Jamie C. Gollotto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on the signature pages thereto as Originators, BrightView Funding LLC, as Buyer, the Company as Performance Guarantor, PNC Bank, National Association as Administrative Agent, and MUFG Bank, Ltd. as Lender Form 8-K filed on March 1, 2024)
10.2*	Assignment Agreement 28, 2017, as amended) dated as of December 29, 2023, by and between U.S. Lawns, Inc. and BrightView Funding LLC, on March 5, 2024 (relating to the Receivable, Financial Agreement, dated as of April 28, 2017, 10.2†
10.3†	The BrightView Executive Savings Holdings, Inc. 2018 Employee Stock Purchase Plan, as amended on March 5, 2024
10.4†	Adoption Agreement for the BrightView Executive Savings Plan, dated as of October 1, 2008, by and between The Brickman Group Ltd. LLC and Fidelity Management Trust Company
10.5†	First Amendment to the Adoption Agreement for the BrightView Executive Savings Plan, dated as of December 13, 2022, by and between BrightView Landscapes, LLC and Fidelity Management Trust Company
31.1*	Certification of Periodic Report by Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Periodic Report by Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002

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
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
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SC	
H	
101.SC	Inline XBRL Taxonomy Extension Schema Document With Embedded
H	Linkbase Documents
101.CA	Inline XBRL Taxonomy Extension Calculation Linkbase Document
L	
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page for the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2023 , March 31, 2024 has been formatted in Inline XBRL.

* Filed herewith.

** Furnished herewith.

† Indicates a management contract or any compensatory plan, contract or [arrangement](#)

[37 arrangement.](#) .
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SIGNATURES

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

Date: [January 31, 2024](#) [May 1, 2024](#)

BrightView Holdings, Inc.

By: /s/ Brian Jackson

Brian Jackson
Chief Accounting Officer
(Principal Accounting Officer)

[3844](#)

ANNEX A
SIXTH AMENDMENT TO THE
PURCHASE AND SALE AGREEMENT AND WAIVER

This **SIXTH AMENDMENT TO THE PURCHASE AND SALE AGREEMENT AND WAIVER** (this “Amendment”), dated as of December 29, 2023, is entered into by and among the following parties:

- (i) BRIGHTVIEW LANDSCAPES, LLC, as Servicer (in such capacity, the “Servicer”) and an Originator;
- (ii) U. S. LAWNS, INC., as an Originator;
- (iii) BRIGHTVIEW CHARGERS, INC., as an Originator (together with U. S. Lawns, Inc., the “Exiting Originators” and each, an “Exiting Originator”);
- (iv) THE VARIOUS PARTIES LISTED ON THE SIGNATURE PAGES HERETO, as Remaining Originators (collectively, the “Remaining Originators” and each, a “Remaining Originator”);
- (v) BRIGHTVIEW FUNDING LLC, as Buyer (the “Buyer”);
- (vi) BRIGHTVIEW HOLDINGS, INC., as Performance Guarantor (the “Performance Guarantor”);
- (vii) PNC BANK, NATIONAL ASSOCIATION, as Administrative Agent (in such capacity, the “Administrative Agent”), as a Lender, as an LC Participant, and as the LC Bank; and
- (viii) MUFG BANK, LTD., as a Lender and as an LC Participant.

Capitalized terms used but not otherwise defined herein (including such terms used above) have the respective meanings assigned thereto in the PSA and RFA described below.

AMENDED AND RESTATED

2018 OMNIBUS INCENTIVE PLAN

BACKGROUND

A. The Servicer, the Exiting Originators, the Remaining Originators and the Buyer are parties to the Purchase and Sale Agreement, dated as of April 28, 2017 (as amended by the First Amendment to the Purchase and Sale Agreement and Omnibus Amendment to the Subordinated Notes, dated as of February 15, 2018, the Second Amendment to the Purchase and Sale Agreement, dated as of September 30, 2020, the Third Amendment to the Purchase and Sale Agreement, dated as of September 30, 2020, the Fourth Amendment to the Purchase and Sale Agreement, dated as of November 23, 2020 and the Fifth Amendment to the Purchase and Sale Agreement, dated as of December 21, 2021, as further amended, restated, supplemented or otherwise modified through the date hereof, the “PSA”).

Sixth Amendment to

Purchase and Sale Agreement and Waiver (BrightView)

(As proposed to be amended March 5, 2024)

B.1. Purpose. The Servicer, purpose of the Buyer, as borrower, BrightView Holdings, Inc. Amended and Restated 2018 Omnibus Incentive Plan, which hereby amends and restates the Administrative Agent, the Lenders, the LC Participants and the LC Bank are parties to the Receivables Financing Agreement, dated as of April 28, 2017 (as amended, restated, supplemented or otherwise modified through the date hereof, the “RFA”).

C. The Performance Guarantor and the Administrative Agent are parties to the Performance Guaranty, dated as of April 28, 2017 (as amended, restated, supplemented or otherwise modified through the date hereof, the “Performance Guaranty”)

D. Each Exiting Originator desires to no longer be party to the PSA as an Originator thereunder BrightView Holdings, Inc. 2018 Omnibus Incentive Plan effective as of March 10, 2020, is to provide a means through which the date hereof.

E. On Company and the other members of the Company Group may attract and retain key personnel and to provide a means whereby directors, officers, employees, consultants and advisors of the Company and the other members of the Company Group can acquire and maintain an

equity interest in the Company, or about November 3, 2023, Baytree, Inc. ("Baytree"), which was an Originator party be paid incentive compensation, including incentive compensation measured by reference to the PSA at such time, was dissolved in contravention value of Sections 5.1 and 6.1(c) Common Stock, thereby strengthening their commitment to the welfare of the PSA (the "Subject Breach"). Company Group and aligning their interests with those of the Company's stockholders.

F.2.

2. Definitions. The Subject Breach following definitions shall be applicable throughout the Plan.

- (a) "Absolute Share Limit" has resulted the meaning given to such term in Section 5(b) of the Plan.
- (b) "Adjustment Event" has the meaning given to such term in Section 12(a) of the Plan.
- (c) "Affiliate" means any Person that directly or indirectly controls, is controlled by or is under common control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting or other securities, by contract or otherwise.
- (d) "Award" means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Other Equity-Based Award and Cash-Based Incentive Award granted under the Plan.
- (e) "Award Agreement" means the document or documents by which each Award (other than a Cash-Based Incentive Award) is evidenced.
- (f) "Board" means the Board of Directors of the Company.
- (g) "Cash-Based Incentive Award" means an Event Award denominated in cash that is granted under Section 11 of Default the Plan.
- (h) "Cause" means, as to any Participant, unless the applicable Award Agreement states otherwise, (i) "Cause," as defined in any employment or consulting agreement between the Participant and Purchase and Sale Termination Event (such Event the Service Recipient in effect at the time of Default, Purchase and Sale Termination Event such Termination; or any failure to give notice thereof and any breach of a representation, warranty, certification or statement regarding (ii) in the absence of any Event such employment or consulting agreement (or the absence of Default, Unmatured Event any definition of Default, Purchase and Sale Termination Event "Cause" contained therein), the Participant's (A) wilful neglect in the performance of the Participant's duties for the Service Recipient or Unmatured Purchase and Sale Termination Event, wilful or repeated failure or refusal to perform such duties; (B) engagement in each case, solely conduct in connection with the Participant's employment or service with the Service Recipient, which results in, or could reasonably be expected to result in, material harm to the extent arising from the Subject Breach, the "Subject Event").

G. The Buyer, the Servicer, the Originators and the Performance Guarantor have requested that the Administrative Agent, the LC Bank, the Lenders and the LC Participants (collectively, the "Waiving Parties") waive the occurrence business or reputation of the Subject Event on the terms and subject to the conditions set forth herein.

H. The parties to the PSA desire to amend the PSA as set forth herein, and the Waiving Parties are willing to consent to such amendment.

NOW, THEREFORE, with the intention of being legally bound hereby, and in consideration of the mutual undertakings expressed herein, each party to this Amendment hereby agrees as follows:

SECTION 2. Amendments to the PSA. The PSA is hereby amended as follows:

- (a) Schedule I of the PSA is hereby replaced in its entirety with the schedule attached hereto as Schedule I.
- (b) Schedule II of the PSA is hereby replaced in its entirety with the schedule attached hereto as Schedule II.
- (c) Schedule III of the PSA is hereby replaced in its entirety with the schedule attached hereto as Schedule III.

SECTION 3. Release of Existing Originators. The parties hereto hereby agree that upon the effectiveness of this Amendment, each Existing Originator shall no longer (a) be a party to the PSA Company or any other Transaction Document and shall no longer have any obligations or rights thereunder (other than such obligations which by their express terms survive termination member of the PSA Company Group; (C) conviction of, or such plea of guilty or no contest to, (I) any felony; or (II) any other Transaction Document) and (b) sell any Receivables crime that results in, or Related Rights could reasonably be expected to result in, material harm to the Buyer pursuant to the PSA business or otherwise.

SECTION 4. Delegation and Assumption of Existing Originators' and Baytree's Obligations. Effective immediately prior to the removal of each Existing Originator as a party to the PSA pursuant to Section 2 above, each Existing Originator hereby delegates to the Remaining Originators, and the Remaining Originators, jointly and severally, hereby assume all of each Existing Originator's duties, obligations and liabilities, if any, under the PSA and each reputation of the other Transaction Documents. The Remaining Originators, jointly and severally, hereby assume all of Baytree's duties, obligations and liabilities, to the extent if any, under the PSA and each of the other Transaction Documents.

SECTION 5. Cancellation of Subordinated Notes. Each Exiting Originator represents and warrants to the other parties hereto that it (a) currently holds the Subordinated Note made by the Buyer to such Exiting Originator (an "Exiting Originator Note") and (b) has not sold, pledged, assigned, or otherwise transferred such Exiting Originator Note or any interest therein. Each Exiting Originator acknowledges and agrees that all the Buyer's outstanding obligations (including, without limitation, any payment obligations) under the applicable Exiting Originator Note have been finally and fully paid and performed on or prior to the date hereof. Each Exiting Originator Note is hereby cancelled and shall have no further force or effect. The Buyer, the Servicer, the Originators and the Performance Guarantor represent and warrant that (a) the Buyer has never made any borrowings under the Subordinated Note made by the Buyer to Baytree (the "Baytree Note"), (b) the Buyer has no unpaid obligations or liabilities under the Baytree Note, (c) the Baytree Note has been cancelled and discharged and (d) Baytree has not sold, pledged, assigned, or otherwise transferred the Baytree Note or any interest therein.

SECTION 6. Consent to Assignment Agreement. The parties hereto consent to the Buyer and U. S. Lawns, Inc. entering into the Assignment Agreement in the form of Exhibit A hereto.

SECTION 7. Authorization to File Financing Statement. Upon the effectiveness of this Amendment, U. S. Lawns, Inc. and the Buyer hereby authorize the Administrative Agent to file (at the expense of the Buyer) one or more UCC-3 terminations in the form of Exhibit B hereto.

SECTION 8. Waiver; Limitations; Certain Agreements.

- (a) Subject to the terms and conditions set forth herein, the Waiving Parties hereby waive the occurrence of the Subject Event.
- (b) Notwithstanding anything to the contrary herein or in any Transaction Document, by executing this Agreement, the Waiving Parties are not now waiving, nor has any Waiving Party agreed to waive in the future, the breach of (or any rights and remedies related to the breach of)

any provisions of the PSA, the RFA, the Performance Guaranty Company or any other Transaction Document other than the Subject Event as strictly described herein. Each Waiving Party hereby specifically reserves any and all rights, remedies and claims it has with respect to any other breach member of the provisions Company Group; (D) material violation of the PSA, written policies of the RFA, Service Recipient, including, but not limited to, those relating to sexual harassment or the Performance Guaranty disclosure or misuse of confidential information, or those set forth in the manuals or statements of policy of the Service Recipient; (E) fraud or misappropriation, embezzlement or misuse of funds or property belonging to the

Company or any other Transaction Document (other than the Subject Event as strictly described herein) that may occur at any time. Each Waiving Party expressly reserves any and all rights, claims and remedies that it has or may have against the Buyer, the Servicer, the Originators, the Performance Guarantor or any other Person under the PSA, the RFA, the Performance Guaranty any other Transaction Document or any applicable law or otherwise.

(c) Without limiting the generality member of the foregoing and for Company Group; or (F) act of personal dishonesty that involves personal profit in connection with the avoidance of doubt, no Waiving Party is hereby waiving Participant's employment or releasing, nor has it agreed service to waive or release the Service Recipient.

(i) "Change in Control" means:

(i) the future, any right or claim to indemnification or reimbursement acquisition (whether by or damages from, the Buyer, the Servicer, the Originators, the Performance Guarantor or any other Person under any Transaction Document, including without limitation, for any liability, obligation, loss, damage, penalty, judgment, settlement, cost, expense or disbursement resulting or arising directly or indirectly from Subject Event or otherwise.

SECTION 9. Representations and Warranties of the Originators and Servicer. The Buyer, the Originators, the Servicer and the Performance Guarantor each hereby represent and warrant to each of the parties hereto as of the date hereof as follows:

(a) **Representations and Warranties.** The representations and warranties made by it in the Transaction Documents (as amended or waived hereby) to which it is a party are true and correct as of the date hereof.

(b) **Enforceability.** The execution and delivery by it of this Amendment, and the performance of its obligations under this Amendment and the other Transaction Documents (as amended or waived hereby) to which it is a party are within its organizational powers and have been duly authorized by all necessary action on its part, and this Amendment and the other Transaction Documents (as amended or waived hereby) to which it is a party are (assuming due authorization and execution by the other parties thereto) its valid and legally binding obligations, enforceable in accordance with its terms, except (x) the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, purchase, merger, consolidation, combination or other similar laws from time to time transaction) by any Person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% (on a fully diluted basis) of either (A) the then outstanding shares of Common Stock, taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to time to acquire such Common Stock; or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in effect relating the election of directors; provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (I) any acquisition by the Company or any Affiliate; (II) any acquisition by any employee benefit plan sponsored or maintained by the Company or any Affiliate; or (III) in respect of an Award held by a particular Participant, any acquisition by the Participant or any group of Persons including the Participant (or any entity controlled by the Participant or any group of Persons including the Participant);

(ii) during any period of twelve (12) months, individuals who, at the beginning of such period, constitute the Board (the "Incumbent Directors") cease for any reason to creditors' rights, and (y) constitute at least a majority of the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and Board; provided, that any Person becoming a director subsequent to the discretion Effective Date, whose election or nomination for election was approved by a vote of at least two-thirds of the court before Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which any proceeding therefor may such Person is named as a nominee for director, without written objection to such nomination) shall be brought an Incumbent Director;

(c) providedNo Event, however, that no individual initially elected or nominated as a director of Default; No Purchase and Sale Termination Event. No Event of Default, Unmatured Event of Default, Purchase and Sale Termination Event or Unmatured Purchase and Sale Termination Event has occurred and is continuing (except to the extent waived hereby), or would occur Company as a result of this Amendment an actual or threatened election contest, as such terms are used in Rule 14a-12 of Regulation 14A promulgated under the transactions contemplated hereby.

(d) **No Baytree-Originated Pool Receivables.** As Exchange Act, with respect to directors or as a result of the date hereof, the Receivables Pool does not include any Receivables originated by Baytree.

SECTION 10. Effect of Amendment; Ratification. All provisions of the Transaction Documents, as expressly amended, waived and modified by this Amendment, shall remain in full force and effect. After this Amendment becomes effective, all references in the PSA (or in any other Transaction Document) to "this Purchase and Sale Agreement", "this Agreement", "hereof", "herein" actual or words threatened solicitation of similar effect referring to the PSA shall be deemed to be references to the PSA as amended proxies or consents by this Amendment. This Amendment shall not be deemed, either expressly or impliedly, to waive, amend or supplement on behalf of any provision of the PSA or any other Transaction Document Person other than as set forth herein. The PSA, the RFA, the Performance Guaranty, in each case, as amended or waived by this Amendment, are hereby ratified and confirmed in all respects.

SECTION 11. Effectiveness. This Amendment shall become effective, as of the date hereof, upon the Administrative Agent's receipt of:

- (a) counterparts to this Amendment executed by each of the parties hereto; and
- (b) counterparts to the Assignment Agreement executed by each of the parties thereto.

SECTION 12. Severability. Any provisions of this Amendment which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 13. Transaction Document. This Amendment shall be a Transaction Document for all purposes.

SECTION 14. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed **Board** shall be deemed to be an **original and Incumbent Director**; or

(iii) the sale, transfer or other disposition of all of which when taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or e-mail transmission shall be effective as delivery of a manually executed counterpart hereof. The words "execution", "executed", "signed", "signature", and words of like import in this Amendment shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 15. GOVERNING LAW AND JURISDICTION.

(a) THIS AMENDMENT, INCLUDING THE RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BUT WITHOUT REGARD TO ANY OTHER CONFLICTS OF LAW PROVISIONS THEREOF).

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver (BrightView)*

(b) EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN NEW YORK CITY, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT, AND EACH PARTY HERETO HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

SECTION 16. Section Headings. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, any other Transaction Document or any provision hereof or thereof.

SECTION 17. Reaffirmation. After giving effect to this Amendment and the transactions contemplated by this Amendment, substantially all of the provisions **assets** of the **Performance Guaranty** shall remain in full force and effect and the **Performance Guarantor** hereby ratifies and affirms the **Performance Guaranty** and acknowledges that the **Performance Guaranty** has continued and shall continue in full force and effect in accordance with its terms.

SECTION 18. Collections Owing to U. S. Lawns, Inc. From and after the date hereof, the parties hereto hereby agree that all account debtors with respect to receivables owing to U. S. Lawns, Inc. shall be directed to make payments of any collections on such receivables to a deposit account other than a Collection Account.

[SIGNATURE PAGES FOLLOW]

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver (BrightView)*

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

BRIGHTVIEW FUNDING LLC, a Delaware limited liability company, as Buyer

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Vice President and Secretary

BRIGHTVIEW LANDSCAPES, LLC, a Delaware limited liability company, as Servicer and a Remaining Originator

By: /s/ Robert Tyler

Name: Robert Tyler

Title: Assistant Treasurer

BRIGHTVIEW CHARGERS, INC., a Delaware corporation, as an Exiting Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

BRIGHTVIEW ENTERPRISE SOLUTIONS, LLC, a Florida limited liability company, Company Group (taken as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary, Executive Vice President and Chief Legal Officer

BRIGHTVIEW LANDSCAPE SERVICES, INC., an Arizona corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW LANDSCAPE SERVICES, INC., a California corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Colorado corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Florida corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Georgia corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Nevada corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Texas corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

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Sixth Amendment to

Purchase and Sale Agreement and Waiver

(BrightView)

BRIGHTVIEW LANDSCAPE DEVELOPMENT, INC., a California corporation, as a

Remaining Originator

By: /s/ Tomas Kuehn

Name: Tomas Kuehn

Title: Secretary

BRIGHTVIEW GOLF MAINTENANCE, INC., a California corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

BRIGHTVIEW TREE CARE SERVICES, INC., a California corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

GTI 1, INC., a Nevada corporation, as a Remaining Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

U. S. LAWNS, INC., a Florida corporation, as an Exiting Originator

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

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Sixth Amendment to

Purchase and Sale Agreement and Waiver

(BrightView)

PNC BANK, NATIONAL ASSOCIATION,

as the Administrative Agent

By: /s/ Chris Blaney

Name: Chris Blaney

Title: Senior Vice President
PNC BANK, NATIONAL ASSOCIATION,
as a Lender and the LC Bank
By: /s/ Chris Blaney

Name: Chris Blaney
Title: Senior Vice President
MUFG BANK, LTD.
as a Lender
By: /s/ Eric Williams

Name: Eric Williams
Title: Managing Director

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

ACKNOWLEDGED AND AGREED TO BY:

BRIGHTVIEW HOLDINGS, INC.,
as the Performance Guarantor and on behalf of its wholly-owned subsidiary, Baytree,
Inc.

By: /s/ Jonathan Gottsegen
Name: Jonathan Gottsegen
Title: Secretary, Executive Vice President
and Chief Legal Officer

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*Sixth Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

Schedule I

LIST AND LOCATION OF EACH ORIGINATOR

<u>Originator</u>	<u>Location</u>
BrightView Landscapes, LLC	Delaware
BrightView Enterprise Solutions, LLC	Florida
BrightView Landscape Services, Inc.	Arizona
BrightView Landscape Services, Inc.	California
BrightView Landscape Services, Inc.	Colorado
BrightView Landscape Services, Inc.	Florida
BrightView Landscape Services, Inc.	Georgia
BrightView Landscape Services, Inc.	Nevada
BrightView Landscape Services, Inc.	Texas
BrightView Landscape Development, Inc.	California
BrightView Golf Maintenance, Inc.	California
BrightView Tree Care Services, Inc.	California
GTI 1, Inc.	Nevada

Schedule I-1 Sixth Amendment to

Schedule II

LOCATION OF BOOKS AND RECORDS OF ORIGINATORS

<u>Originator</u>	<u>Location of Books and Records</u>
BrightView Landscapes, LLC	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Enterprise Solutions, LLC	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
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BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Landscape Development, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Golf Maintenance, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
BrightView Tree Care Services, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422
GTI 1, Inc.	980 Jolly Road Blue Bell, Pennsylvania 19422

Schedule II-1 Sixth Amendment to

Schedule III

TRADE NAMES

BrightView Landscapes, LLC

- BrightView

BrightView Enterprise Solutions, LLC

- BrightView

BrightView Landscape Services, Inc.

- BrightView

BrightView Landscape Development, Inc.

- BrightView

BrightView Golf Maintenance, Inc.

- BrightView

BrightView Tree Care Services, Inc.

- BrightView

GTI 1, Inc.

- BrightView

Schedule III-1

*Second Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

EXHIBIT A

[Form of Assignment Agreement]

Exhibit A

*Second Amendment to
Purchase and Sale Agreement and Waiver
(BrightView)*

EXHIBIT B

[Form of UCC-3 Termination Statement]

*Schedule B Sixth Amendment to
Purchase and Sale Agreement (BrightView)*

Exhibit 10.2

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Assignment Agreement") dated as of December 29, 2023 is between U. S. LAWNS, INC. a Florida corporation (the "Buyer"), and BRIGHTVIEW FUNDING LLC, a Delaware corporation (the "Seller").

Reference is made to (i) the Receivables Financing Agreement, dated as of April 28, 2017 (as amended by the First Amendment to the Receivables Financing Agreement, dated as of February 21, 2019, the Second Amendment to the Receivables Financing Agreement, dated as of February 21, 2021, the Third Amendment to the Receivables Financing Agreement, dated as of June 22, 2022 and the Fourth Amendment to the Receivables Financing Agreement, dated as of August 31, 2023 and as further amended, supplemented or otherwise modified through and including the date hereof, the "Receivables Financing Agreement"), among the Seller, as borrower, BrightView Landscapes, LLC, as servicer (in such capacity, the "Servicer"), PNC Bank, National Association, as LC Bank and administrative agent (in such capacity, the "Administrative Agent"), PNC Capital Markets LLC, as structuring agent, and the Persons from time to time party thereto as Lenders and LC Participants, (ii) the Purchase and Sale Agreement, dated as of April 28, 2017 (as amended by the First Amendment to the Purchase and Sale Agreement and Omnibus Amendment to the Subordinated Notes, dated as of February 15, 2018, the Second Amendment to the Purchase and Sale Agreement, dated as of September 30, 2020, the Third Amendment to the Purchase and Sale Agreement, dated as of September 30, 2020, the Fourth Amendment to the Purchase and Sale Agreement, dated as of November 23, 2020 and the Fifth Amendment to the Purchase and Sale Agreement, dated as of December 21, 2021 and as further amended, supplemented or otherwise modified through the date hereof, the "Purchase and Sale Agreement"), among the various entities as Originators thereunder from time to time, the Servicer and the Seller and (iii) the Sixth Amendment to Purchase and Sale Agreement, dated as of the date hereof (the "Sale Agreement Amendment"), among the Servicer, the Seller, the Buyer, as the exiting originator, and the originators party thereto, as remaining originators. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Receivables Financing Agreement.

The Seller, the Servicer and the Buyer have informed the Lenders, the LC Bank and the Administrative Agent of the contemplated removal of the Buyer from the Purchase and Sale Agreement as an "Originator" thereunder. In connection therewith, the Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, all of the Receivables that are currently outstanding and owned by the Seller and that were originated by the Buyer (collectively, the "Subject Receivables"). The Subject Receivables are identified on the electronic data file which the Buyer (or the Servicer on its behalf) delivered to the Administrative Agent on or prior to the date hereof. In consideration of the payment by the Buyer to the Seller on the date hereof of the purchase price (the "Purchase Price") in an amount equal to the reasonably equivalent value of the Subject Receivables on the date hereof, as mutually agreed by such parties and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby sells, assigns and transfers to the Buyer and its successors and assigns all right, title and interest of the Seller in and to:

- (a) each Subject Receivable;

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- (b) all rights to all Related Security with respect to all such Subject Receivables (but only so long as such Related Security is related solely to Subject Receivables and not any other Receivables);
- (c) all books and records of the Buyer to the extent related (whole) to any of the foregoing, and all rights, remedies, powers, privileges, title and interest (but not obligations) in and to each Collection and all Collection Accounts, into which any Collections or other proceeds with respect to such Subject Receivables may be deposited, and any related investment property acquired with any such Collections or other proceeds (as such term is defined in the applicable UCC); and
- (d) all Collections and other proceeds (as defined in the UCC) of any of the foregoing that are or were received by Buyer (the items listed in clauses (b) through (d), collectively, the "Subject Receivables Related Rights" and together with the Subject Receivables, the "Transferred Property").

providedhowever, that, for the avoidance of doubt, the Transferred Property shall not include any Related Rights to the extent relating to any Receivable Person that is not a Subject Receivable.

The Purchase Price shall be paid in full to the Seller by the Buyer on the date hereof in the form of (i) a reduction in the outstanding principal balance an Affiliate of the Subordinated Note in favor of the Buyer in an amount equal to the lesser of the Purchase Price and the outstanding principal balance of such Subordinated Note, Company, plus (ii) to the extent the outstanding principal balance of such Subordinated Note is less than the Purchase Price immediately prior to giving effect to such payment, a cash payment in the amount of such difference in accordance with the terms hereof, which amount shall constitute a Collection on the Subject Receivables for all purposes of the Receivables Financing Agreement and shall be deposited on or prior to the date hereof into the Collection Account.

The assignment of the Seller made hereby is made without recourse, representation or warranty, except that the Seller represents and warrants that, immediately prior to such sale, assignment and transfer and after giving effect to the release contemplated below (a) it is the sole owner of the Transferred Property and (b) it is transferring the Transferred Property free and clear of any lien or encumbrance with respect thereto created by or through the Seller. It is the intention of the Seller and the Buyer that the assignment contemplated by this Assignment Agreement shall constitute a sale of the Transferred Property from the Seller to the Buyer and the beneficial interest in and title to such assets shall not be part of the Seller's estate in the event of the filing of a bankruptcy petition by or against the Seller under any bankruptcy law. Each of the Buyer and the Seller hereby covenant and agree that, notwithstanding anything to the contrary set forth in the Purchase and Sale Agreement, no Subject Receivable shall hereafter be sold, transferred or assigned by the Buyer to the Seller pursuant to the Purchase and Sale Agreement.

By executing a counterpart hereto (a) the Administrative Agent, the LC Bank and the Lenders each hereby acknowledge and consent to the transfers contemplated herein and (b) upon (x) the Administrative Agent's receipt of counterparts of this Assignment Agreement signed by each of the parties hereto, (y) payment by the Buyer to the Seller of the Purchase Price in accordance with the terms hereof and (z) satisfaction of each condition to effectiveness set forth

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in the Sale Agreement Amendment, the Administrative Agent, LC Bank and each Lender hereby releases all of their respective right, title and interest in and to the Transferred Property, and any and all liens, security interests or other encumbrances granted to the Administrative Agent, LC Bank or the Lenders in the Transferred Property. Each of the Administrative Agent, the LC Bank, each Lender and the Seller hereby agrees that (a) the term "Receivable" as used in the Receivables Financing Agreement and the other Transaction Documents shall no longer include any Subject Receivables and (b) the term "Related Rights" or "Collections" as used in the Receivables Financing Agreement and the other Transaction Documents shall no longer include any Subject Receivables Related Rights.

This Assignment Agreement shall be a Transaction Document for purposes of the Receivables Financing Agreement.

Notwithstanding anything to the contrary herein or in the other Transaction Documents, by signing this Assignment Agreement, the Administrative Agent, the LC Bank and the Lenders are not now waiving, nor have they agreed to waive in the future, any Purchase and Sale Termination Event, Unmatured Purchase and Sale Termination Event, Event of Default or Unmatured Event of Default, or the breach of, or any rights and remedies related to the breach of, any provisions of the Purchase and Sale Agreement or any other Transaction Documents. This Assignment Agreement shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Receivables Financing Agreement, the Purchase and Sale Agreement or any other Transaction Document other than as expressly set forth herein.

Each of the Buyer and the Seller, as to itself represents and warrants to the Administrative Agent, each Lender and the LC Bank that, immediately after giving effect to the sales, assignments, transfers and releases contemplated hereby, (i) the representations and warranties of such Person contained in each of the Transaction Documents, are true and correct (unless stated to relate solely to an earlier date, in which case such representations or warranties were true and correct as of such earlier date) and (ii) no Purchase and Sale Termination Event, Unmatured Purchase and Sale Termination Event, Event of Default or Unmatured Event of Default shall exist.

This Assignment Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart hereof by facsimile or other electronic means shall be equally effective as delivery of an originally executed counterpart. The words "execution", "executed", "signed", "signature", and words of like import in this Assignment Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Assignment Agreement may not be amended or otherwise modified except in writing executed by each of the parties hereto.

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The Buyer hereby agrees that it will not institute, or join any other Person in instituting, against the Seller any Insolvency Proceeding for at least one year and one day following the Final Payout Date.

Any provision of this Assignment Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

THIS ASSIGNMENT AGREEMENT, INCLUDING THE RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BUT WITHOUT REGARD TO ANY OTHER CONFLICTS OF LAW PROVISIONS THEREOF).

(continued on the following page)

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IN WITNESS WHEREOF, the undersigned has caused this Assignment Agreement to be duly executed and delivered by its duly authorized officer as of the date first written above.

BRIGHTVIEW FUNDING LLC (i) “

as Seller

By: Code /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Vice President and Secretary

U. S. LAWNS, INC.,

as Buyer

By: /s/ Jonathan Gottsegen

Name: Jonathan Gottsegen

Title: Secretary

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Assignment Agreement

(BrightView Enterprise Solutions)

Acknowledged and Consented to:

PNC BANK, NATIONAL ASSOCIATION,

as Administrative Agent

By: /s/ Chris Blaney

Name: Chris Blaney

Title: Senior Vice President

Acknowledged and Consented to:

PNC BANK, NATIONAL ASSOCIATION,

as Lender and LC Bank

By: /s/ Chris Blaney

Name: Chris Blaney

Title: Senior Vice President

MUFG BANK, LTD.

as Lender and LC Participant

By: /s/ Eric Williams

Name: Eric Williams

Title: Managing Director

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Assignment Agreement

(BrightView Enterprise Solutions)

The CORPORATEplan for RetirementSM

EXECUTIVE PLAN

BASIC PLAN DOCUMENT

IMPORTANT NOTE

This document has not been approved by the Department of Labor, the Internal Revenue Service or any other governmental entity. The Employer must determine whether the plan is subject to the Federal securities laws and the securities laws of the various states. The Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is "unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees" under the Employee Retirement Income Security Act with respect to the Employer's particular situation. Fidelity Management Trust Company, its affiliates and employees cannot and do not provide legal or tax advice or opinions in connection with this document. This document does not constitute legal or tax advice or opinions and is not intended or written to be used, and it cannot be used by any taxpayer, for the purposes of avoiding penalties that may be imposed on the taxpayer. This document must be reviewed by the Employer's attorney prior to adoption.

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CORPORATEplan for Retirement EXECUTIVE

BASIC PLAN DOCUMENT

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PREAMBLE

It is the intention of the Employer to establish herein an unfunded plan maintained solely for the purpose of providing deferred compensation for a select group of management or highly compensated employees as provided in ERISA. The Employer further intends that this Plan comply with Code section 409A, and the Plan is to be construed accordingly.

If the Employer has previously maintained the Plan described herein pursuant to a previously existing plan document or description, the Employer's adoption of this Plan document is an amendment and complete restatement of, and supersedes, such previously existing document or description with respect to benefits accrued or to be paid on or after the effective date of this document (except to the extent expressly provided otherwise herein).

Article 1. Adoption Agreement.

Article 2. Definitions.

2.01 Definitions.

(a) Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

(1) "Account" means an account established on the books of the Employer for the purpose of recording amounts credited to a Participant and any income, expenses, gains, or losses attributable thereto.

(2) "Active Participant" means a Participant who is eligible to accrue benefits under a plan (other than earnings on amounts previously deferred) within the 24-month period ending on the date the Participant becomes a Participant under Section 3.01. Notwithstanding the above, however, a Participant is not an Active Participant if he has been paid all amounts deferred under the plan, provided that he was, on and before the date of the last payment, ineligible to continue or to elect to continue to participate in the plan for periods after such last payment (other than through an election of a different time and form of payment with respect to the amounts paid).

(A) For purposes of Section 4.01(d), as used in the first paragraph of the definition of "Active Participant" above, "plan" means an account balance plan (or portion thereof) of the Employer or a Related Employer subject to Code section 409A pursuant to which the Participant is eligible to accrue benefits only if the Participant elects to defer compensation thereunder, and the "date the Participant becomes a Participant under Section 3.01" refers only to the date the

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Participant becomes a Participant with respect to Deferral Contributions.

(B) For purposes of Section 8.01(a)(2), as used in the first paragraph of the definition of "Active Participant" above, "plan" means an account balance plan (or portion thereof) of the Employer or a Related Employer subject to Code section 409A pursuant to which the Participant is eligible to accrue benefits without any election by the Participant to defer compensation thereunder, and the "date the Participant becomes a Participant under Section 3.01" refers only to the date the Participant becomes a Participant with respect to Matching or Employer Contributions.

(3) "Administrator" means the Employer adopting this Plan (but excluding Related Employers) or other person designated by the Employer in Section 1.01(c).

(4) "Adoption Agreement" means Article 1, under which the Employer establishes and adopts or amends the Plan and selects certain provisions of the Plan. The provisions of the Adoption Agreement are an integral part of the Plan.

(5) "Beneficiary" means the person or persons entitled under Section 7.02 to receive benefits under the Plan upon the death of a Participant.

(6) "Bonus" means any Performance-based Bonus or any Non-performance-based Bonus as listed and identified in the table in Section 1.05(a)(2) hereof.

(7) "Change in Control" means a change in control with respect to the applicable corporation, as defined in 26 CFR section 1.409A-3(i)(5). For purposes of this definition "applicable corporation" means:

(A) The corporation for which the Participant is performing services at the time of the change in control event;

(B) The corporation(s) liable for payment hereunder (but only if either the accrued benefit hereunder is attributable to the performance of service by the Participant for such corporation(s) or there is a bona fide business purpose for such corporation(s) to be liable for such payment and, in either case, no significant purpose of making such corporation(s) liable for such benefit is the avoidance of Federal income tax); or

(C) A corporate majority shareholder of one of the corporations described in (A) or (B) above or any corporation in a chain of corporations in which each corporation is a majority shareholder of

another corporation in the chain, ending in a corporation identified in (A) or (B) above.

(8) "Code" means the Internal Revenue Code of 1986, as amended, from time and any successor thereto. Reference in the Plan to time.

(9) "Compensation" means for purposes of Article 4:

(A) If the Employer elects Section 1.04(a), such term as defined in such Section 1.04(a).

(B) If the Employer elects Section 1.04(b), wages as defined in Code any section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required Code shall be deemed to furnish the Employee a written statement under Code sections 6041(d) and 6051(a)(3), excluding include any items elected by the Employer in Section 1.04(b), reimbursements regulations or other expense allowances, fringe benefits (cash interpretative guidance under such section, and non-cash), moving expenses, deferred compensation and welfare benefits, but including amounts that are not includable in any amendments or successor provisions to such section, regulations or guidance.

(k) "Committee" means the gross income Compensation Committee of the Employee under a salary reduction agreement by reason Board or any properly delegated subcommittee thereof or, if no such Compensation Committee or subcommittee thereof exists, the Board.

(l) "Common Stock" means the common stock of the application of Code section 125, 132(f)(4) Company, par value \$0.01 per share (and any stock or other securities into which such Common Stock may be converted or into which it may be exchanged).

(m) "Company" means BrightView Holdings, Inc., 402(e)(3), 402(h) or 403(b). Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)).

(C) If the Employer elects Section 1.04(c), any and all monetary remuneration paid to the Director by the Employer, including, but not limited to, meeting fees and annual retainers, and excluding items listed in Section 1.04(c).

For purposes of this Section 2.01(a)(9), Compensation shall also include amounts deferred pursuant to an election under Section 4.01.

(10) "Deferral Contribution" means a hypothetical contribution credited to a Participant's Account as the result of the Participant's election to reduce his Compensation in exchange for such credit, as described in Section 4.01.

(11) "Director" means a person, other than an Employee, who is elected or appointed as a member of the board of directors of the Employer, with respect to a Delaware corporation, or to an analogous position with respect to an entity that is not a corporation.

(12) "Disability" is described in Section 1.07(a)(2).

(13) "Employee" means any employee of the Employer.

(14) "Employer" means the employer named in Section 1.02(a) and any Related Employers listed in Section 1.02(b), successor thereto.

(15) "Employer Contribution" (n) "Company Group" means, a hypothetical contribution credited to a Participant's Account under collectively, the Plan as a result Company and its Subsidiaries.

(o) "Date of the Employer's crediting of such amount, as described in Section 4.03.

(16) "Employment Commencement Date/Grant" means the date on which the Employee commences granting of an Award is authorized, or such other date as may be specified in such authorization.

(p) "Designated Foreign Subsidiaries" means all members of the Company Group that are organized under the laws of any jurisdiction or country other than the United States of America that may be designated by the Board or the Committee from time to time.

(q) "Disability" means, as to any Participant, unless the applicable Award Agreement states otherwise, (i) "Disability," as defined in any employment or consulting agreement between the Participant and the Service Recipient in effect at the time of such Termination; or (ii) in the absence of

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any such employment or consulting agreement (or the absence of any definition of "Disability" contained therein), a condition entitling the Participant to receive benefits under a long-term disability plan of the Service Recipient or other member of the Company Group in which such Participant is eligible to participate, or, in the absence of such a plan, the complete and permanent inability of the Participant by reason of illness or accident to perform the duties of the position at which the Participant was employed or served when such disability commenced. Any determination of whether Disability exists in the absence of a long-term disability plan shall be made by the Company (or its designee) in its sole and absolute discretion.

(r) "Effective Date" means June 27, 2018.

(s) "Eligible Person" means any (i) individual employed by any member of the Company Group; *provided, however*, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument relating thereto; (ii) director or officer of any member of the Company Group; or (iii) consultant or advisor to any member of the Company Group who may be offered securities registrable pursuant to a registration statement on Form S-8 under the Securities Act, who, in the case of each of clauses (i) through (iii) above has entered into an Award Agreement or who has received written notification from the Committee or its designee that they have been selected to participate in the Plan.

(t) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto. Reference in the Plan to any section of (or rule promulgated under) the Exchange Act shall be deemed to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successor provisions to such section, rules, regulations or guidance.

(u) "Exercise Price" has the meaning given to such term in Section 7(b) of the Plan.

(v) "Fair Market Value" means, on a given date, (i) if the Common Stock is listed on a national securities exchange, the closing sales price of the Common Stock reported on the primary exchange on which the Common Stock is listed and traded on such date, or, if there are no such sales on that date, then on the last preceding date on which such sales were reported; (ii) if the Common Stock is not listed on any national securities exchange but is quoted in an inter-dealer quotation system on a last sale basis, the average between the closing bid price and ask price reported on such date, or, if there is no such sale on that date, then on the last preceding date on which a sale was reported; or (iii) if the Common Stock is not listed on a national securities exchange or quoted in an inter-dealer quotation system on a last sale basis, the amount determined by the Committee in good faith to be the fair market value of the Common Stock; *provided, however*, as to any Awards granted on or with a Date of Grant of the date of the pricing of the Company's initial public offering, "Fair Market Value" shall be equal to the per share price at which the Common Stock is offered to the public in connection with such initial public offering.

(w) "GAAP" has the meaning given to such term in Section 7(d) of the Plan.

(x) "Immediate Family Members" has the meaning given to such term in Section 14(b) of the Plan.

(y) "Incentive Stock Option" means an Option which is designated by the Committee as an incentive stock option as described in Section 422 of the Code and otherwise meets the requirements set forth in the Plan.

(z) "Indemnifiable Person" has the meaning given to such term in Section 4(e) of the Plan.

(aa) "Nonqualified Stock Option" means an Option which is not designated by the Committee as an Incentive Stock Option.

(bb) "Non-Employee Director" means a member of the Board who is not an employee of any member of the Company Group.

(cc) "Option" means an Award granted under Section 7 of the Plan.

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(dd) "Option Period" has the meaning given to such term in Section 7(c) of the Plan.

(ee) "Other Equity-Based Award" means an Award that is not an Option, Stock Appreciation Right, Restricted Stock or Restricted Stock Unit, that is granted under Section 10 of the Plan and is (i) payable by delivery of Common Stock, and/or (ii) measured by reference to the value of Common Stock.

(ff) "Participant" means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to the Plan.

(gg) "Performance Criteria" means specific levels of performance of the Company (and/or one or more of the Company's Affiliates, divisions or operational and/or business units, business segments, administrative departments, or any combination of the foregoing) or any Participant, which may be determined in accordance with GAAP or on a non-GAAP basis including, but not limited to, one or more of the following measures: (i) terms relative to a peer group or index; (ii) basic, diluted, or adjusted earnings per share; (iii) sales or revenue; (iv) earnings before interest, taxes, and other adjustments (in total or on a per share basis); (v) cash available for distribution; (vi) basic or adjusted net income; (vii) returns on equity, assets, capital, revenue or similar measure; (viii) level and growth of dividends; (ix) the price or increase in price of Common Stock; (x) total shareholder return; (xi) total assets; (xii) growth in assets, new originations of assets, or financing of assets; (xiii) equity market capitalization; (xiv) reduction or other quantifiable goal with respect to general and/or specific expenses; (xv) equity capital raised; (xvi) mergers, acquisitions, increase in enterprise value of Affiliates, Subsidiaries, divisions or business units or sales of assets of Affiliates, Subsidiaries, divisions or business units or sales of assets; and (xvii) any combination of the foregoing. Any one or more of the Performance Criteria may be stated as a percentage of another Performance Criteria, or used on an absolute or relative basis to measure the performance of the Company and/or one or more Affiliates as a whole or any divisions or operational and/or business units, business segments, administrative departments of the Company and/or one or more Affiliates or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Criteria may be compared to the performance of a selected group of comparison companies, or a published or special index that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices.

(hh) "Permitted Transferee" has the meaning given to such term in Section 14(b) of the Plan.

(ii) "Person" means any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).

(jj) "Plan" means this BrightView Holdings, Inc. Amended and Restated 2018 Omnibus Incentive Plan, as it may be further amended and/or restated from time to time.

(kk) "Qualifying Director" means a Person who is, with respect to actions intended to obtain an exemption from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 under the Exchange Act, a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act.

(ll) "Restricted Period" means the period of time determined by the Committee during which an Award is subject to restrictions, including vesting conditions.

(mm) "Restricted Stock" means Common Stock, subject to certain specified restrictions (which may include, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of the Plan.

(nn) "Restricted Stock Unit" means an unfunded and unsecured promise to deliver shares of Common Stock, cash, other securities or other property, subject to certain restrictions (which may include, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of the Plan.

(oo) "SAR Period" has the meaning given to such term in Section 8(c) of the Plan.

(pp) "Securities Act" means the Securities Act of 1933, as amended, and any successor thereto. Reference in the Plan to any section of (or rule promulgated under) the Securities Act shall be deemed

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to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successor provisions to such section, rules, regulations or guidance.

(qq) "Service Recipient" means, with respect to a Participant holding a given Award, the member of the Company Group by which the original recipient of such Award is, or following a Termination was most recently, principally employed or to which such original recipient provides, or following a Termination was most recently providing, services, as applicable.

(rr) "Stock Appreciation Right" or "SAR" means an Award granted under Section 8 of the Plan.

(ss) "Strike Price" has the meaning given to such term in Section 8(b) of the Plan.

(tt) "Subsidiary" means, with respect to any specified Person:

(i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of such entity's voting securities (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(ii) any partnership (or any comparable foreign entity) (A) the sole general partner (or functional equivalent thereof) or the managing general partner of which is such Person or Subsidiary of such Person or (B) the only general partners (or functional equivalents thereof) of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(uu) "Substitute Award" has the meaning given to such term in Section 5(e) of the Plan.

(vv) "Sub-Plans" means any sub-plan to the Plan that has been adopted by the Board or the Committee for the purpose of permitting the offering of Awards to employees of certain Designated Foreign Subsidiaries or otherwise outside the United States of America, with each such sub-plan designed to comply with local laws applicable to offerings in such foreign jurisdictions. Although any Sub-Plan may be designated a separate and independent plan from the Plan in order to comply with applicable local laws, the Absolute Share Limit and the other limits specified in Section 5(b) shall apply in the aggregate to the Plan and any Sub-Plan adopted hereunder.

(ww) "Termination" means the termination of a Participant's employment or service, as applicable, with the Employer, Service Recipient for any reason (including death).

3. Effective Date; Duration. The Plan became effective as of the Effective Date. The expiration date of the Plan, on and after which date no Awards may be granted hereunder, shall be the tenth (10th) anniversary of the Effective Date; *provided, however, that such expiration shall not affect Awards then outstanding, and the terms and conditions of the Plan shall continue to apply to such Awards.*

(17) "ERISA" means

4. Administration.

(a) General. The Committee shall administer the Employee Retirement Income Security Plan. To the extent required to comply with the provisions of Rule 16b-3 promulgated under the Exchange Act (if the Board is not acting as the Committee under the Plan), it is intended that each member of 1974, the Committee shall, at the time such member takes any action with respect to an Award under the Plan that is intended to qualify for the exemptions provided by Rule 16b-3 promulgated under the Exchange Act, be a Qualifying Director. However, the fact that a Committee member shall fail to qualify as a Qualifying Director shall not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan.

(b) Committee Authority. Subject to the provisions of the Plan and applicable law, the Committee shall have the sole and plenary authority, in addition to other express powers and authorizations conferred on the Committee by the Plan, to (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of shares of Common Stock to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether,

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to what extent, and under what circumstances Awards may be settled in, or exercised for, cash, shares of Common Stock, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, shares of Common Stock, other securities, other Awards or other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant or of the Committee; (vii) interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Committee shall deem appropriate for the proper administration of the Plan; (ix) adopt Sub-Plans; and (x) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

(c) Delegation. Except to the extent prohibited by applicable law or the applicable rules and regulations of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or traded, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any Person or Persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time. Without limiting the generality of the foregoing, the Committee may delegate to one or more officers of any member of the Company Group, the authority to act on behalf of the Committee with respect to any matter, right, obligation, or election which is the responsibility of, or which is allocated to, the Committee herein, and which may be so delegated as a matter of law, except with respect to grants of Awards to Persons (i) who are Non-Employee Directors, or (ii) who are subject to Section 16 of the Exchange Act.

(d) Finality of Decisions. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan, any Award or any Award Agreement shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all Persons, including, without limitation, any member of the Company Group, any Participant, any holder or beneficiary of any Award, and any stockholder of the Company.

(e) **Indemnification.** No member of the Board, the Committee or any employee or agent of any member of the Company Group (each such Person, an "Indemnifiable Person") shall be liable for any action taken or omitted to be taken or any determination made with respect to the Plan or any Award hereunder (unless constituting fraud or a willful criminal act or omission). Each Indemnifiable Person shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense (including attorneys' fees) that may be imposed upon or incurred by such Indemnifiable Person in connection with or resulting from any action, suit or proceeding to which such Indemnifiable Person may be a party or in which such Indemnifiable Person may be involved by reason of any action taken or omitted to be taken or determination made with respect to the Plan or any Award hereunder and against and from any and all amounts paid by such Indemnifiable Person with the Company's approval, in settlement thereof, or paid by such Indemnifiable Person in satisfaction of any judgment in any such action, suit or proceeding against such Indemnifiable Person, and the Company shall advance to such Indemnifiable Person any such expenses promptly upon written request (which request shall include an undertaking by the Indemnifiable Person to repay the amount of such advance if it shall ultimately be determined, as provided below, that the Indemnifiable Person is not entitled to be indemnified); provided, that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of the Company's choice. The foregoing right of indemnification shall not be available to an Indemnifiable Person to the extent that a final judgment or other final adjudication (in either case not subject to further appeal) binding upon such Indemnifiable Person determines that the acts, omissions or determinations of such Indemnifiable Person giving rise to the indemnification claim resulted from such Indemnifiable Person's fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the organizational documents of any member of the Company Group. The foregoing right of indemnification shall not be exclusive of or otherwise supersede any other rights of

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indemnification to which such Indemnifiable Persons may be entitled under the organizational documents of any member of the Company Group, as a matter of law, under an individual indemnification agreement or contract or otherwise, or any other power that the Company may have to indemnify such Indemnifiable Persons or hold such Indemnifiable Persons harmless.

(f) **Board Authority.** Notwithstanding anything to the contrary contained in the Plan, the Board may, in its sole discretion, at any time and from time to time, amended, grant Awards and administer the Plan with respect to any Awards. Any such actions by the Board shall be subject to the applicable rules of the securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted. In any such case, the Board shall have all the authority granted to the Committee under the Plan.

(18) "Inactive Participant" means **5. Grant of Awards; Shares Subject to the Plan; Limitations.**

(a) **Grants.** The Committee may, from time to time, grant Awards to one or more Eligible Persons. All Awards granted under the Plan shall vest and become exercisable in such manner and on such date or dates or upon such event or events as determined by the Committee, including, without limitation, attainment of Performance Criteria.

(b) **Share Reserve and Limits.** Awards granted under the Plan shall be subject to the following limitations: (i) subject to Section 12 of the Plan, no more than ~~10,650,000~~24,650,000 shares of Common Stock (the "Absolute Share Limit") shall be available for Awards under the Plan; (ii) subject to Section 12 of the Plan, no more than the number of shares of Common Stock equal to the Absolute Share Limit may be issued in the aggregate pursuant to the exercise of Incentive Stock Options granted under the Plan; and (iii) the maximum number of shares of Common Stock subject to Awards granted during a single fiscal year to any Non-Employee Director, taken together with any cash fees paid to such Non-Employee Director during the fiscal year, shall not exceed \$350,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

(c) **Share Counting.** Other than with respect to Substitute Awards, to the extent that an Award expires or is canceled, forfeited, or terminated without issuance to the Participant of the full number of shares of Common Stock to which the Award related, the unissued shares will again be available for grant under the Plan. Shares of Common Stock shall be deemed to have been issued in settlement of Awards if the Fair Market Value equivalent of such shares is paid in cash in connection with such settlement; provided, however, that no shares shall be deemed to have been issued in settlement of a SAR or Restricted Stock Unit that provides for settlement only in cash and settles only in cash or in respect of any Cash-Based Incentive Award. In no event shall shares (i) tendered or withheld on exercise of Options or other Award for the payment of the exercise or purchase price or withholding taxes, (ii) not issued upon the settlement of a SAR that by the terms of the Award Agreement would settle in shares of Common Stock (or could settle in shares of Common Stock), or (iii) purchased on the open market with cash proceeds from the exercise of Options, again become available for other Awards under the Plan.

(d) **Source of Shares.** Shares of Common Stock issued by the Company in settlement of Awards may be authorized and unissued shares, shares held in the treasury of the Company, shares purchased on the open market or by private purchase or a combination of the foregoing.

(e) **Substitute Awards.** Awards may, in the sole discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity directly or indirectly acquired by the Company or with which the Company combines ("Substitute Awards"). Substitute Awards shall not be counted against the Absolute Share Limit; *provided*, that Substitute Awards issued in connection with the assumption of, or in substitution for, outstanding options intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code shall be counted against the aggregate number of shares of Common Stock available for Awards of Incentive Stock Options under the Plan. Subject to applicable stock exchange requirements, available shares under a stockholder-approved plan of an entity directly or indirectly acquired by the Company or with which the Company combines (as appropriately adjusted to reflect the acquisition or combination transaction) may be used for Awards under the Plan and shall not reduce the number of shares of Common Stock available for issuance under the Plan.

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6. Eligibility. Participation in the Plan shall be limited to Eligible Persons.

7. Options.

(a) **General.** Each Option granted under the Plan shall be evidenced by an Award Agreement, which agreement need not be the same for each Participant. Each Option so granted shall be subject to the conditions set forth in this Section 7, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Incentive Stock Options shall be granted only to Eligible Persons who are employees of a member of the Company Group, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the stockholders of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(1) of the Code; *provided*, that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall be subject to, and comply with, such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

(b) **Exercise Price.** Except as otherwise provided by the Committee in the case of Substitute Awards, the exercise price ("Exercise Price") per share of Common Stock for each Option shall not be less than 100% of the Fair Market Value of such share (determined as of the Date of Grant); *provided*, however, that in the case of an Incentive

Stock Option granted to an employee who, at the time of the grant of such Option, owns stock representing more than 10% of the voting power of all classes of stock of any member of the Company Group, the Exercise Price per share shall be no less than 110% of the Fair Market Value per share on the Date of Grant.

(c) **Vesting and Expiration.**

(i) Options shall vest and become exercisable in such manner and on such date or dates or upon such event or events as determined by the Committee.

(ii) Options shall expire upon a date determined by the Committee, not to exceed ten (10) years from the Date of Grant (the "Option Period"); *provided*, that if the Option Period (other than in the case of an Incentive Stock Option) would expire at a time when trading in the shares of Common Stock is prohibited by the Company's insider trading policy (or Company-imposed "blackout period"), then the Option Period shall be automatically extended until the thirtieth (30th) day following the expiration of such prohibition. Notwithstanding the foregoing, in no event shall the Option Period exceed five (5) years from the Date of Grant in the case of an Incentive Stock Option granted to a Participant who on the Date of Grant owns stock representing more than 10% of the voting power of all classes of stock of any member of the Company Group.

(d) **Method of Exercise and Form of Payment.** No shares of Common Stock shall be issued pursuant to any exercise of an Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any Federal, state, local and non-U.S. income, employment and any other applicable taxes required to be withheld. Options which have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company (or telephonic instructions to the extent provided by the Committee) in accordance with the terms of the Option accompanied by payment of the Exercise Price. The Exercise Price shall be payable: (i) in cash, check, cash equivalent and/or shares of Common Stock valued at the Fair Market Value at the time the Option is exercised (including, pursuant to procedures approved by the Committee, by means of attestation of ownership of a sufficient number of shares of Common Stock in lieu of actual issuance of such shares to the Company); *provided*, that such shares of Common Stock are not an Employee subject to any pledge or Director, other security interest and have been held by the Participant for at least six

(19) "Matching Contribution"

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(6) months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment applying generally accepted accounting principles ("GAAP")); or (ii) by such other method as the Committee may permit, in its sole discretion, including, without limitation (A) in other property having a fair market value on the date of exercise equal to the Exercise Price; (B) if there is a public market for the shares of Common Stock at such time, by means of a hypothetical contribution credited broker-

assisted "cashless exercise" pursuant to which the Company is delivered (including telephonically to the extent permitted by the Committee) a copy of irrevocable instructions to a Participant's Account stockbroker to sell the shares of Common Stock otherwise issuable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the Exercise Price; or (C) a "net exercise" procedure effected by withholding the minimum number of shares of Common Stock otherwise issuable in respect of an Option that are needed to pay the Exercise Price. Any fractional shares of Common Stock shall be settled in cash.

(e) **Notification upon Disqualifying Disposition of an Incentive Stock Option.** Each Participant awarded an Incentive Stock Option under the Plan as a result of shall notify the Employer's crediting of such amount, as described Company in Section 4.02.

(20) "Non-performance-based Bonus" means any Bonus listed under the column entitled "non-performance based" in Section 1.05(a)(2).

(21) "Participant" means any Employee or Director who participates in the Plan in accordance with Article 3 (or formerly participated in the Plan and has an amount credited to his Account).

(22) "Performance-based Bonus" means any Bonus listed under the column entitled "performance based" in Section 1.05(a)(2), which constitutes compensation, the amount of, or entitlement to, which is contingent on the satisfaction of pre-established organizational or individual performance criteria relating to a performance period of at least 12 consecutive months and which is further defined in 26 CFR section 1.409A-1(e).

(23) "Permissible Investment" means the investments specified by the Employer as available for hypothetical investment of Accounts. The Permissible Investments under the Plan are listed in the Service Agreement, and the provisions of the Service Agreement listing the Permissible Investments are hereby incorporated herein.

(24) "Plan" means the plan established by the Employer as set forth herein as a new plan or as an amendment to an existing plan, such establishment to be evidenced by the Employer's execution of the Adoption Agreement, together with any and all amendments hereto.

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(25) "Related Employer" means any employer other than the Employer named in Section 1.02(a), if the Employer and such other employer are members of a controlled group of corporations (as defined in Code section 414(b)) or trades or businesses (whether or not incorporated) under common control (as defined in Code section 414(c)).

(26) "Separation from Service" means writing immediately after the date the Participant retires or otherwise has makes a termination disqualifying disposition of employment (or a termination of the contract any Common Stock acquired pursuant to which the Participant has provided services as a Director, for a Director Participant) with exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including, without limitation, any sale) of such Common Stock before the Employer and all Related Employers, as further defined in 26 CFR section 1.409A-1(h); provided, however, that

(A) For purposes later of this paragraph (26), the definition of "Related Employer" shall be modified as follows:

(i) In applying Code section 1563(a)(1), (2) and (3) for purposes of determining a controlled group of corporations under Code section 414(b), the phrase "at least 50%" shall be used instead of "at least 80 percent" each place "at least 80 percent" appears in Code section 1563(a)(1), (2) and (3); and

(ii) In applying 26 CFR section 1.414(c)-2 for purposes of determining trades or business (whether or not incorporated) under common control for purposes of Code section 414(c), the phrase "at least 50%" shall be used instead of "at least 80 percent" each place "at least 80 percent" appears in 26 CFR section 1.414(c)-2.

(B) In the event a Participant provides services to the Employer or a Related Employer as an Employee and a Director,

(i) The Employee Participant's services as a Director are not taken into account in determining whether the Participant has a Separation from Service as an Employee; and

(ii) The Director Participant's services as an Employee are not taken into account in determining whether the Participant has a Separation from Service as a Director provided that this Plan is not aggregated with a plan subject to Code section 409A

in which the Director Participant participates as an employee of the Employer or a Related Employer or in which the Employee Participant participates as a director (or a similar position with respect to a non-corporate entity) of the Employer or a Related Employer, as applicable, pursuant to 26 CFR section 1.409A-1(c)(2)(ii).

(27) "Service Agreement" means the agreement between the Employer and Trustee regarding the arrangement between the parties for recordkeeping services with respect to the Plan.

(28) "Specified Employee," (unless defined by the Employer in a separate writing, in which case such writing is hereby incorporated herein) means a Participant who meets the requirements in 26 CFR section 1.409A-1(i) applying the default definition components provided in such regulation (those that would apply absent elections, as described in 26 CFR section 1.409A-1(i)(8)), including an identification date of December 31. In the event that such default definition components are applicable, the Employer has elected Section 1.01(b)(2) and, immediately prior to the date in Section 1.01(b)(2), the Plan applied an identification date (the "prior date") other than the December 31, the prior date shall continue to apply, and December 31 shall not apply, until the date that is 12 months two (2) years after the Date of Grant of the Incentive Stock Option, or (ii) the date that is one (1) year after the date in Section 1.01(b)(2).

(29) "Trust" means of exercise of the trust created Incentive Stock Option. The Company may, if determined by the Employer, Committee and in accordance with procedures established by the Committee, retain possession, as agent for the applicable Participant, of any Common Stock acquired pursuant to the Trust agreement between exercise of an Incentive Stock Option until the Employer and the Trustee, under which assets are held, administered, and managed, subject to the claims end of the Employer's creditors in the event of the Employer's insolvency, until paid to Participants and their Beneficiaries as specified in the Plan.

(30) "Trust Fund" means the property held in the Trust by the Trustee.

(31) "Trustee" means the individual(s) or entity appointed by the Employer under the Trust agreement.

(32) "Unforeseeable Emergency" is as defined in 26 CFR section 1.409A-3(i)(3)(i).

(33) "Year of Service" is as defined in Section 7.03(b) for purposes of the elapsed time method and in Section 7.03(c) for purposes of the class year method.

(b) Pronouns used in the Plan are in the masculine gender but include the feminine gender unless the context clearly indicates otherwise.

Article 3. Participation.

3.01 Date of Participation. An Employee or Director becomes a Participant on the date such Employee's or Director's participation becomes effective (as described in Section 1.03).

3.02 Participation following a Change in Status.

(a) If a Participant ceases to be an Employee or Director and thereafter resumes the same status he had as a Participant during his immediately previous participation

in the Plan (as an Employee if previously a Participant as an Employee and as a Director if previously a Participant as a Director), he will again become a Participant immediately upon resumption of such status, provided, however, that if such Participant is a Director, he is an eligible Director upon resumption of such status (as defined in Section 1.03(b)), and provided, further, that if such Participant is an Employee, he is an eligible Employee upon resumption of such status (as defined in Section 1.03(a)). Deferral Contributions to such Participant's Account thereafter, if any, shall be subject to (1) or (2) below.

- (1) If the Participant resumes such status during a period for which such Participant had previously made a valid deferral election pursuant to Section 4.01, he shall immediately resume such Deferral Contributions. Deferral Contributions applicable to periods thereafter shall be made pursuant to the election and other rules described in Section 4.01.
- (2) If the Participant resumes such status after the period described in the first preceding sentence, subject to complying with any instructions

from such Participant as to the sale of paragraph (1) such Common Stock.

(f) **Compliance With Laws, etc.** Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in a manner which the Committee determines would violate the Sarbanes-Oxley Act of 2002, as it may be amended from time to time, or any other applicable law or the applicable rules and regulations of the Securities and Exchange Commission or the applicable rules and regulations of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or traded.

8. Stock Appreciation Rights.

(a) **General.** Each SAR granted under the Plan shall be evidenced by an Award Agreement. Each SAR so granted shall be subject to the conditions set forth in this Section 3.02, 8, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. Any Option granted under the Plan may include tandem SARs. The Committee also may award SARs to Eligible Persons independent of any Deferral Contributions Option.

(b) **Strike Price.** Except as otherwise provided by the Committee in the case of Substitute Awards, the strike price ("Strike Price") per share of Common Stock for each SAR shall not be less than 100% of the Fair Market Value of such share (determined as of the Date of Grant). Notwithstanding the foregoing, a SAR granted in tandem with (or in substitution for) an Option previously granted shall have a Strike Price equal to the Exercise Price of the corresponding Option.

(c) **Vesting and Expiration.**

(i) A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable in such manner and on such date or dates or upon such event or events as determined by the Committee; *provided, however,* that notwithstanding any such vesting dates or events, the Committee may, in its sole discretion, accelerate the vesting of any SAR at any time and for any reason.

(ii) SARs shall expire upon a date determined by the Committee, not to exceed ten (10) years from the Date of Grant (the "SAR Period"); *provided,* that if the SAR Period would expire at a time when trading in the shares of Common Stock is prohibited by the Company's insider trading policy (or Company-imposed "blackout period"), then the SAR Period shall be automatically extended until the 30th day following the expiration of such prohibition.

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(d) **Method of Exercise.** SARs which have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Award, specifying the number of SARs to be exercised and the date on which such SARs were awarded.

(e) **Payment.** Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR that is being exercised multiplied by the excess of the Fair Market Value of one (1) share of Common Stock on the exercise date over the Strike Price, less an amount equal to any Federal, state, local and non-U.S. income, employment and any other applicable taxes required to be withheld. The Company shall pay such amount in cash, in shares of Common Stock valued at Fair Market Value, or any combination thereof, as determined by the Committee. Any fractional shares of Common Stock shall be settled in cash.

9. Restricted Stock and Restricted Stock Units.

(a) **General.** Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award Agreement. Each Restricted Stock and Restricted Stock Unit so granted shall be subject to the conditions set forth in this Section 9, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable

Award Agreement.

(b) **Stock Certificates and Book-Entry; Escrow or Similar Arrangement.** Upon the grant of Restricted Stock, the Committee shall cause a stock certificate registered in the name of the Participant to be issued or shall cause share(s) of Common Stock to be registered in the name of the Participant and held in book-entry form subject to the Company's directions and, if the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than issued to the Participant pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Committee, if applicable; and (ii) the appropriate stock power (endorsed in blank) with respect to the Restricted Stock covered by such agreement. If a Participant shall fail to execute and deliver (in a manner permitted under Section 14(a) of the Plan or as otherwise determined by the Committee) an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and blank stock power within the amount of time specified by the Committee, the Award shall be null and void. Subject to the restrictions set forth in this Section 9, Section 14(c) of the Plan and the applicable Award Agreement, a Participant generally shall have the rights and privileges of a stockholder as to shares of Restricted Stock, including, without limitation, the right to vote such Restricted Stock. To the extent shares of Restricted Stock are forfeited, any stock certificates issued to the Participant evidencing such shares shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect thereto shall terminate without further obligation on the part of the Company. A Participant shall have no rights or privileges as a stockholder as to Restricted Stock Units.

(c) **Vesting.** Restricted Stock and Restricted Stock Units shall vest, and any applicable Restricted Period shall lapse, in such manner and on such date or dates or upon such event or events as determined by the Committee.

(d) **Issuance of Restricted Stock and Settlement of Restricted Stock Units.**

(i) Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall issue to the Participant, or the Participant's beneficiary, without charge, the stock certificate (or, if applicable, a notice evidencing a book-entry notation) evidencing the shares of Restricted Stock which have not then been forfeited and with respect to which the Restricted Period has expired (rounded down to the nearest full share). Dividends, if any, that may have been withheld by the Committee and attributable to any particular share of Restricted Stock shall be ~~made pursuant~~ distributed to the ~~election and other rules~~ described Participant in Section 4.01.

(b) When an individual who is a Participant due to his status as an eligible Employee (as defined in Section 1.03(a)) continues cash or, in the ~~employ~~ sole discretion of the Employer or Related Employer but ceases to be an eligible Employee, Committee, in shares of Common Stock having a Fair Market Value (on the ~~individual shall not receive an allocation~~ date of Matching or Employer Contributions for the period during which he is not an eligible Employee. Such Participant shall continue to make Deferral Contributions throughout the remainder of the applicable period (as described in Section 4.01) in which such change in status occurs, if, and as, applicable.

(c) When an individual who is a Participant due to his status as an eligible Director (as defined in Section 1.03(b)) continues his directorship with the Employer or a Related Employer but ceases to be an eligible Director, the individual shall not receive an allocation of Matching or Employer Contributions for the period during which he is not an eligible Director. Such Participant shall continue to make Deferral Contributions throughout the remainder of the applicable period (as described in Section 4.01) in which such change in status occurs, if, and as, applicable.

Article 4. Contributions.

4.01 Deferral Contributions. If elected by the Employer pursuant to Section 1.05(a) and/or 1.06(a), a Participant described in such applicable Section may elect to reduce his Compensation by a specified percentage or dollar amount. The Employer shall credit an amount to the Participant's Account ~~distribution~~ equal to the amount of such reduction. Except as dividends, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends.

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(ii) Unless otherwise provided by the Committee in this an Award Agreement or otherwise, upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall issue to the Participant or the Participant's beneficiary, without charge, one (1) share of Common Stock (or other securities or other property, as applicable) for each such outstanding Restricted Stock Unit; *provided, however*, that the Committee may, in its sole discretion, elect to (A) pay cash or part cash and part shares of Common Stock in lieu of issuing only shares of Common Stock in respect of such Restricted Stock Units; or (B) defer the issuance of shares of Common Stock (or cash or part cash and part shares of Common Stock, as the case may be) beyond the expiration of the Restricted Period if such extension would not cause adverse tax consequences under Section 4.01, 409A of the Code. If a cash payment is made in lieu of issuing shares of Common Stock in respect of such ~~election~~ Restricted Stock Units, the amount of such payment shall be ~~effective~~ equal to ~~defer~~ Compensation relating to all services performed in the calendar year beginning after Fair Market Value per share of the calendar year in Common Stock as of the date on which the Participant executes the election. Under no circumstances may a salary reduction agreement be adopted retroactively. Restricted Period lapsed with respect to such Restricted Stock Units.

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If(e) Legends on Restricted Stock. Each certificate, if any, or book entry representing Restricted Stock awarded under the Employer has elected Plan, if any, shall bear a legend or book entry notation substantially in the form of the following, in addition to apply Section 1.05(a)(2), no amount will be deducted from Bonuses unless any other information the Participant has made a separate deferral election applicable Company deems appropriate, until the lapse of all restrictions with respect to such Bonuses. shares of Common Stock:

TRANSFER OF THIS CERTIFICATE AND THE SHARES REPRESENTED HEREBY IS RESTRICTED PURSUANT TO THE TERMS OF THE BRIGHTVIEW HOLDINGS, INC. AMENDED AND RESTATED 2018 OMNIBUS INCENTIVE PLAN AND A Participant's election RESTRICTED STOCK AWARD AGREEMENT BETWEEN BRIGHTVIEW HOLDINGS, INC. AND PARTICIPANT. A COPY OF SUCH PLAN AND AWARD AGREEMENT IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF BRIGHTVIEW HOLDINGS, INC.

10. Other Equity-Based Awards. The Committee may grant Other Equity-Based Awards under the Plan to defer Compensation Eligible Persons, alone or in tandem with other Awards, in such amounts and dependent on such conditions as the Committee shall from time to time in its sole discretion determine. Each Other Equity-Based Award granted under the Plan shall be evidenced by an Award Agreement and shall be subject to such conditions not inconsistent with the Plan as may be changed at reflected in the applicable Award Agreement.

11. Cash-Based Incentive Awards. The Committee may grant Cash-Based Incentive Awards under the Plan to any Eligible Person. Each Cash-Based Incentive Award granted under the Plan shall be evidenced in such form as the Committee may determine from time before the last permissible date for making such election, at which time such election becomes irrevocable, to time.

12. Changes in Capital Structure and Similar Events. Notwithstanding anything herein any other provision in this Plan to the contrary, the conditions following provisions shall apply to all Awards granted hereunder (other than Cash-Based Incentive Awards):

(a) **General.** In the event of (i) any dividend (other than regular cash dividends) or other distribution (whether in the form of cash, shares of Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire shares of Common Stock or other securities of the Company, or other similar corporate transaction or event that affects the shares of Common Stock (including a Change in Control); or (ii) unusual or nonrecurring events affecting the Company, including changes in applicable rules, rulings, regulations or other requirements, that the Committee determines, in its sole discretion, could result in substantial dilution or enlargement of the rights intended to be granted to, or available for, Participants (any event in (i) or (ii), an "Adjustment Event"), the Committee shall, in respect of any such Adjustment Event, make such proportionate substitution or adjustment, if any, as it deems equitable, to any or all of (A) the Absolute Share Limit, or any other limit applicable under the Plan with respect to the number of Awards which may be granted hereunder; (B) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) which may be issued in respect of Awards or with respect to which Awards may be granted under the Plan or any Sub-Plan; and (C) the terms of any outstanding Award, including, without limitation, (I) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) subject to outstanding

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Awards or to which outstanding Awards relate; (II) the Exercise Price or Strike Price with respect to any Award; or (III) any applicable performance measures (including, without limitation, Performance Criteria); provided, that in the case of any "equity restructuring" (within the meaning of the Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor pronouncement thereto)), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring.

(b) **Change in Control.** Without limiting the foregoing, in connection with any Change in Control, the Committee may, in its sole discretion, provide for any one or more of the following:

(i) substitution or assumption of Awards, or to the extent that the surviving entity (or Affiliate thereof) of such Change in Control does not substitute or assume the Awards, full acceleration of vesting of, exercisability of, or lapse of restrictions on, as applicable, any Awards; *provided, however, that with respect to any performance-vested Awards, any such acceleration of vesting, exercisability, or lapse of restrictions shall be based on actual performance through the date of such Change in Control; and* (ii) cancellation of any one or more outstanding Awards and payment to the holders of such Awards that are vested as of such cancellation (including, without limitation, any Awards that would vest as a result of the occurrence of such event but for such cancellation or for which vesting is accelerated by the Committee in connection with such event pursuant to clause (i) above), the value of such Awards, if any, as determined by the Committee (which value, if applicable, may be based upon the price per share of Common Stock received or to be received by other stockholders of the Company in such event), including, without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the shares of Common Stock subject to such Option or SAR over the aggregate Exercise Price or Strike Price of such Option or SAR (it being understood that, in such event, any Option or SAR having a per share Exercise Price or Strike Price equal to, or in excess of, the Fair Market Value of a share of Common Stock subject thereto may be canceled and terminated without any payment or consideration therefor).

For purposes of clause (i) above, an award will be considered granted in substitution of an Award if it has an equivalent value (as determined consistent with clause (ii) above) with the original Award, whether designated in securities of the acquiror in such Change in Control transaction (or an Affiliate thereof), or in cash or other property (including in the same consideration that other stockholders of the Company receive in connection with such Change in Control transaction), and retains the vesting schedule applicable to the original Award.

Payments to holders pursuant to clause (ii) above shall be made in cash or, in the sole discretion of the Committee, in the form of such other consideration necessary for a Participant to receive property, cash, or securities (or combination thereof) as such Participant would have been entitled to receive upon the occurrence of the transaction if the Participant had been, immediately prior to such transaction, the holder of the number of shares of Common Stock covered by the Award at such time (less any applicable Exercise Price or Strike Price).

(c) Other Requirements. Prior to any payment or adjustment contemplated under this Section 12, the Committee may ~~make~~ require a ~~deferral election~~ Participant to (i) represent and warrant as to the unencumbered title to the Participant's Awards; (ii) bear such Participant's pro rata share of any post-closing indemnity obligations, and be subject to the same post-closing purchase price adjustments, escrow terms, offset rights, holdback terms, and similar conditions as the other holders of Common Stock, subject to any limitations or reductions as may be necessary to comply with Section 409A of the Code; and (iii) deliver customary transfer documentation as reasonably determined by the Committee.

(d) Fractional Shares. Any adjustment provided under this Section 12 may provide for the elimination of any fractional share that might otherwise become subject to an Award.

(e) Binding Effect. Any adjustment, substitution, determination of value or other action taken by the Committee under this Section 12 shall be conclusive and binding for all purposes.

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13. Amendments and Termination.

(a) Amendment and Termination of the Plan. The Board or Committee may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; *provided, that no such amendment, alteration, suspension, discontinuance or termination shall be made without stockholder approval if (i) such approval is necessary to comply with any regulatory requirement applicable to the Plan (including, without limitation, as necessary to comply with any rules or regulations of any securities exchange or inter-dealer quotation system on*

which the securities of the Company may be listed or quoted) or for changes in GAAP to new accounting standards; (ii) it would materially increase the number of securities which may be issued under the Plan (except for increases pursuant to Section 5 or 12 of the Plan); or (iii) it would materially modify the requirements for participation in the Plan; *provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary. Notwithstanding the foregoing, no amendment shall be made to Section 13(c) of the Plan without stockholder approval.*

(b) Amendment of Award Agreements. The Committee may, to the extent consistent with the terms of the Plan and any applicable Award Agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award Agreement, prospectively or

retroactively (including after a Participant's Termination); *provided*, that, other than pursuant to Section 12, any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any Participant with respect to any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant.

(c) **No Repricing.** Notwithstanding anything in the Plan to the contrary, without stockholder approval, except as otherwise permitted under Section 12 of the Plan, (i) no amendment or modification may reduce the Exercise Price of any Option or the Strike Price of any SAR; (ii) the Committee may not cancel any outstanding Option or SAR and replace it with a new Option or SAR (with a lower Exercise Price or Strike Price, as the case may be) or other Award or cash payment that is greater than the intrinsic value (if any) of the cancelled Option or SAR; and (iii) the Committee may not take any other action which is considered a "repricing" for purposes of the stockholder approval rules of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or quoted.

14. General.

(a) **Award Agreements.** Each Award (other than a Cash-Based Incentive Award) under the Plan shall be evidenced by an Award Agreement, which shall be delivered to the Participant to whom such Award was granted and shall specify the terms and conditions of the Award and any rules applicable thereto, including, without limitation, the effect on such Award of the death, Disability or Termination of a Participant, or of such other events as may be determined by the Committee. For purposes of the Plan, an Award Agreement may be in any such form (written or electronic) as determined by the Committee (including, without limitation, a Board or Committee resolution, an employment agreement, a notice, a certificate or a letter) evidencing the Award. The Committee need not require an Award Agreement to be signed by the Participant or a duly authorized representative of the Company.

(b) **Nontransferability.**

(i) Each Award shall be exercisable only by such Participant to whom such Award was granted during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant (unless such transfer is specifically required pursuant to a domestic relations order or by applicable law) other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against any member of the Company Group; *provided*, that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

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(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards (other than Incentive Stock Options) to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award Agreement to preserve the purposes of the Plan, to (A) any Person who is a "family member" of the Participant, as such term is used in the instructions to Form S-8 under

the Securities Act or any successor form of registration statement promulgated by the Securities and Exchange Commission (collectively, the "Immediate Family Members"); (B) a trust solely for the benefit of the Participant and the Participant's Immediate Family Members; (C) a partnership or limited liability company whose only partners or stockholders are the Participant and the Participant's Immediate Family Members; or (D) a beneficiary to whom donations are eligible to be treated as "charitable contributions" for federal income tax purposes (each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as a "Permitted Transferee"); *provided*, that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

(iii) The terms of any Award transferred in accordance with clause (ii) above shall apply to the Permitted Transferee and any reference in the Plan, or in any applicable Award Agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the shares of Common Stock to be acquired pursuant to the exercise of such Option if the Committee determines, consistent with any applicable Award Agreement, that such a registration statement is necessary or appropriate; (C) neither the Committee nor the Company shall be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise; and (D) the consequences of a Participant's Termination under the terms of the Plan and the applicable Award Agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award Agreement.

(c) **Dividends and Dividend Equivalents.** The Committee may, in its sole discretion, provide a Participant as part of an Award with dividends, dividend equivalents, or similar payments in respect of Awards, payable in cash, shares of Common Stock, other securities, other Awards or other property, on a current or deferred basis, on such terms and conditions as may be determined by the Committee in its sole discretion, including, without limitation, payment directly to the Participant, withholding of such amounts by the Company subject to vesting of the Award or reinvestment in additional shares of Common Stock, Restricted Stock or other Awards. Without limiting the foregoing, unless otherwise provided in the applicable salary reduction agreement are hereby incorporated herein Award Agreement, any dividend otherwise payable in respect of any share of Restricted Stock

that remains subject to vesting conditions at the time of payment of such dividend shall be retained by the Company and supersede any otherwise inconsistent Plan provision. remain subject to the same vesting conditions as the share of Restricted Stock to which the dividend relates.

(a) (d) Performance Based Bonus Tax Withholding.

(i) A Participant shall be required to pay to the Company or one or more of its Subsidiaries, as applicable, an amount in cash (by check or wire transfer) equal to the aggregate amount of any income, employment and/or other applicable taxes that are statutorily required to be withheld in respect of an Award. Alternatively, the Company or any of its Subsidiaries may elect, in its sole discretion, to satisfy this requirement by withholding such amount from any cash compensation or other cash amounts owing to a Participant.

(ii) Without limiting the foregoing, the Committee may (but is not obligated to), in its sole discretion, permit or require a Participant to satisfy, all or any portion of the minimum income, employment and/or other applicable taxes that are statutorily required to be withheld with respect to an Award by (A) the delivery of shares of Common Stock (which are not subject to any pledge or other security interest) that have been both held by the Participant and vested for at least

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six (6) months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment under applicable accounting standards) having an aggregate Fair Market Value equal to such

minimum statutorily required withholding liability (or portion thereof); or (B) having the Company withhold from the shares of Common Stock otherwise issuable or deliverable to, or that would otherwise be retained by, the Participant upon the grant, exercise, vesting or settlement of the Award, as applicable, a number of shares of Common Stock with an aggregate Fair Market Value equal to an amount, subject to clause (iii) below, not in excess of such minimum statutorily required withholding liability (or portion thereof).

(iii) The Committee has full discretion to allow Participants to satisfy, in whole or in part, any additional income, employment and/or other applicable taxes payable by them with respect to an Award by electing to have the Company withhold from the shares of Common Stock otherwise issuable or deliverable to, or that would otherwise be retained by, a Participant upon the grant, exercise, vesting or settlement of the Award, as applicable, shares of Common Stock having an aggregate Fair Market Value that is greater than the applicable minimum required statutory withholding liability (but such withholding may in no event be in excess of the maximum statutory withholding amount(s) in a Participant's relevant tax jurisdictions).

(e) **Data Protection.** By participating in the Plan or accepting any rights granted under it, each Participant consents to the collection and processing of personal data relating to the Participant so that the Company and its Affiliates can fulfill their obligations and exercise their rights under the Plan and generally administer and manage the Plan. This data will include, but may not be limited to, data about participation in the Plan and shares offered or received, purchased, or sold under the Plan from time to time and other appropriate financial and other data (such as the date on which the Awards were granted) about the Participant and the Participant's participation in the Plan.

(f) **No Claim to Awards; No Rights to Continued Employment; Waiver.** No employee of any member of the Company Group, or other Person, shall have any claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. There is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Service Recipient or any other member of the Company Group, nor shall it be construed as giving any Participant any rights to continued service on the Board. The Service Recipient or any other member of the Company Group may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or any Award Agreement. By accepting an Award under the Plan, a Participant shall thereby be deemed to have waived any claim to continued exercise or vesting of an Award or to damages or severance entitlement related to non-continuation of the Award beyond the period provided under the Plan or any Award Agreement, except to the extent of any provision to the contrary in any written employment contract or other agreement between the Service Recipient and/or any member of the Company Group and the Participant, whether any such agreement is executed before, on or after the Date of Grant.

(g) **International Participants.** With respect to a Performance-based Bonus, a separate election made pursuant to Section 1.05(a)(2) will be effective to defer such Bonus if made no later than 6 months before the end Participants who reside or work outside of the period during which United States of America, the services on which such Performance-based Bonus is based are performed.

(b) **Fiscal Year Bonus.** With respect to a Bonus relating to a period of service coextensive with one or more consecutive fiscal years of the Employer, of which no amount is paid or payable during the service period, a separate election pursuant to Section 1.05(a)(2) will be effective to defer such Bonus if made no later than the close of the Employer's fiscal year next preceding the first fiscal year in which the Participant performs any services for which such Bonus is payable.

(c) **Cancellation of Salary Reduction Agreement.**

(1) The Administrator Committee may cancel a Participant's salary reduction agreement pursuant to the provisions of 26 CFR section 1.409A-3(j)(4)(viii) in connection with the Participant's Unforeseeable Emergency. To the extent required pursuant to the application of 26 CFR section 1.401(k)-1(d)(3) (or any successor thereto), a Participant's salary reduction agreement shall be automatically cancelled.

(2) The Administrator may cancel a Participant's salary reduction agreement pursuant to the provisions of 26 CFR section 1.409A-3(j)(4)(xii) in connection with the Participant's disability. Such cancellation must occur by the later of the end of the Participant's taxable year or the 15th day of the third month following the date the Participant incurs a disability. For purposes of this paragraph (2), a disability is any medically determinable physical or mental impairment resulting in the Participant's inability to perform the duties of his or her position or any substantially similar position, where such impairment can be expected to result in death or can be expected to last for a continuous period of not less than six months.

In no event may the Participant, directly or indirectly, elect such a cancellation. A cancellation pursuant to this subsection (c) shall apply only to Compensation not yet earned.

(d) **Initial Deferral Election.** Notwithstanding the above, if the Participant is not an Active Participant, the Participant may make an election to defer Compensation

within 30 days after the Participant becomes a Participant, which election shall be effective with respect to Compensation payable for services performed during the calendar year (or other deferral period described in (a) or (b) above, as applicable) and after the date of such election. For Compensation that is earned based upon a specified performance period (e.g., an annual bonus) an election pursuant to this subsection (d) will be effective to defer an amount equal to the total amount of the Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election over the total number of days in the performance period.

4.02 Matching Contributions. If so provided by the Employer in Section 1.05(b) and/or 1.06(b)(1), the Employer shall credit a Matching Contribution to the Account of each Participant entitled to such Matching Contribution. The amount of the Matching Contribution shall be determined in accordance with Section 1.05(b) and/or 1.06(b)(1), as applicable, provided, however, that the Matching Contributions credited to the Account of a Participant pursuant to Section 1.05(b)(2) shall be limited pursuant to (a) and (b) below:

(a) The sum of Matching Contributions made on behalf of a Participant pursuant to Section 1.05(b)(2) for any calendar year and any other benefits the Participant accrues pursuant to another plan subject to Code section 409A as a result of such Participant's action or inaction under a qualified plan with respect to elective deferrals and other employee pre-tax contributions subject to the contribution restrictions under Code section 401(a)(30) or 402(g) shall not result in an increase in the amounts deferred under all plans subject to Code section 409A in which the Participant participates in excess of the limit with respect to elective deferrals under Code section 402(g)(1)(A), (B) and (C) in effect for the calendar year in which such action or inaction occurs; and

(b) The Matching Contributions made on behalf of a Participant pursuant to Section 1.05(b)(2) shall never exceed 100% of the matching amounts that would be provided under the qualified employer plan identified in Section 1.05(b)(2) absent any plan-based restrictions that reflect limits on qualified plan contributions under the Code.

4.03 Employer Contributions. If so provided by the Employer in Section 1.05(c)(1) and/or 1.06(b)(2), the Employer shall make an Employer Contribution to be credited to the Account of each Participant entitled thereto in the amount provided in such Section(s). If so provided by the Employer in Section 1.05(c)(2) and/or 1.06(b)(3), the Employer may make an Employer Contribution to be credited to the Account maintained on behalf of any Participant in such an amount as the Employer, in its sole discretion, shall determine, subject to the provisions of the applicable Section.

4.04 Election Forms. Notwithstanding anything herein to the contrary, amend the terms of an election form the Plan and create or amend Sub-Plans or amend outstanding Awards with respect to such Participants in order to conform such terms with the conditions under which a Participant may

make any election hereunder, as provided in such form (whether electronic requirements of local law or otherwise) are hereby incorporated herein and supersede any otherwise inconsistent Plan provision.

Article 5. Participants' Accounts. The Administrator will maintain an Account to obtain more favorable tax or other treatment for each Participant, reflecting hypothetical contributions credited to the Participant, along with hypothetical earnings, expenses, gains and losses, pursuant to the terms hereof. A hypothetical contribution shall be credited to the Account of a Participant on the date determined by the Employer and accepted by the Plan recordkeeper. The Administrator will maintain such other accounts and records as it deems appropriate to the discharge of its duties under the Plan.

Article 6. Investment of Accounts.

6.01 Manner of Investment. All amounts credited to the Accounts of Participants shall be treated as though invested and reinvested only in Permissible Investments.

6.02 Investment Decisions, Earnings and Expenses. Investments in which the Accounts of Participants shall be treated as invested and reinvested shall be directed by the Employer or by each Participant, or both, in accordance with Section 1.09. All dividends, interest, gains, and distributions of any nature that would be earned on a Permissible Investment will be credited to the Account as though reinvested in additional shares of that Permissible Investment. Expenses that would be attributable to such investments shall be charged to the Account of the Participant.

Article 7. Right to Benefits.

7.01 Retirement. If provided by the Employer in Section 1.08(e)(1), the Account of a Participant or an Inactive Participant who attains retirement eligibility prior to a Separation from Service will be 100% vested. any member of the Company Group.

7.02 (h) Death Designation and Change of Beneficiary. If provided by Each Participant may file with the Employer in Section 1.08(e)(2), Committee a written designation of one or more Persons as the Account of a Participant beneficiary or former Participant beneficiaries, as applicable, who dies before shall be entitled to receive the distribution of his entire Account will be 100% vested, provided that amounts payable with respect to an Award, if any, due under the time of his death he is earning Years of Service. Plan upon the Participant's death. A Participant may, designate a Beneficiary or Beneficiaries, from time to time, revoke or change the Participant's beneficiary designation without the consent of any prior beneficiary by filing a new designation of Beneficiary with the Committee. The last such designation received by the Committee shall be controlling; provided, however,

that no designation, or Beneficiaries, change or revocation thereof, shall be effective unless received by giving notice the Committee prior to the Administrator on Participant's death, and in no event shall it be effective as of a form designated date prior to such receipt. If no beneficiary designation is filed by a Participant, the Administrator. If more than one person is designated as the Beneficiary, their respective interests shall be as indicated on the designation form.

A copy of the death certificate or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's Account, such amount will be paid to his surviving spouse or, if none, to his estate (such spouse or estate beneficiary shall be deemed to be the Beneficiary Participant's spouse or, if the Participant is unmarried at the time of death, the Participant's estate).

(i) Termination. Except as otherwise provided in an Award Agreement, unless determined otherwise by the Committee at any point following such event: (i) neither a temporary absence from employment or service due to illness, vacation or leave of absence (including, without limitation, a call to active duty for military service through a Reserve or National

Guard unit) nor a transfer from employment or service with one Service Recipient to employment or service with another Service Recipient (or vice-versa) shall be considered a Termination; and (ii) if a Participant undergoes a Termination of employment, but such Participant continues to provide services to the Company Group in a non-employee capacity, such change in status shall not be considered a Termination for purposes of the Plan. Further, unless otherwise determined by the Committee, in the event that any Service Recipient ceases to be a member of the Company Group (by reason of sale, divestiture, spin-off or other similar transaction), unless a Participant's employment or service is transferred to another entity that would constitute a Service Recipient immediately following such transaction, such Participant shall be deemed to have suffered a Termination hereunder as of the date of the consummation of such transaction.

(i) **No Rights as a Stockholder.** Except as otherwise specifically provided in the Plan or any Award Agreement, no Person shall be entitled to the privileges of ownership in respect of shares of Common Stock which are subject to Awards hereunder until such shares have been issued or delivered to such Person.

(k) **Government and Other Regulations.**

(i) The obligation of the Company to settle Awards in shares of Common Stock or other consideration shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any shares of Common Stock pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel (if the Company has requested such an opinion), satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the shares of Common Stock to be offered or sold under the Plan. The Committee shall have the authority to provide that all shares of Common Stock or other securities of any member of the Company Group issued under the Plan shall be subject to such stop-transfer orders and other restrictions as the Committee may deem advisable under the Plan, the applicable Award Agreement, the Federal securities laws, or the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or quoted and any other applicable Federal, state, local or non-U.S. laws, rules, regulations and other requirements, and, without limiting the generality of Section 9 of the Plan, the Committee may cause a legend or legends to be put on certificates representing shares of Common Stock or other securities of any member of the Company Group issued under the Plan to make appropriate reference to such restrictions or may cause such Common Stock or other securities of any member of the Company Group issued under the Plan in book-entry form to be held subject to the Company's instructions or subject to appropriate stop-transfer orders. Notwithstanding any provision in the Plan to the contrary, the Committee reserves the right to, at any time, add any additional terms or provisions to any Award granted under the Plan that the Committee, in its sole discretion, deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

(ii) The Committee may cancel an Award or any portion thereof if it determines, in its sole discretion, that legal or contractual restrictions and/or blockage and/or other market considerations would make the Company's acquisition of shares of Common Stock from the public markets, the

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Company's issuance of Common Stock to the Participant, the Participant's acquisition of Common Stock from the Company and/or the Participant's sale of Common Stock to the public markets, illegal, impracticable or inadvisable. If the Committee determines to cancel all or any portion of an Award in accordance with the foregoing, the Company shall, subject to any limitations or reductions as may be necessary to comply with Section 409A of the Code, (A) pay to the Participant an amount equal to the excess of (I) the aggregate Fair Market Value of the shares of Common Stock subject to such Award or portion thereof canceled (determined as of the applicable exercise date, or the date that the shares would have been vested or issued, as applicable); over (II) the aggregate Exercise Price or Strike Price (in the case of an Option or SAR, respectively) or any amount payable as a condition of issuance of shares of Common Stock (in the case of any other Award). Such amount shall be delivered to the Participant as soon as practicable following the cancellation of such Award or portion thereof, or (B) in the case of Restricted Stock, Restricted Stock Units or Other Equity-Based Awards, provide the Participant with a cash payment or equity subject to deferred vesting and delivery consistent with the vesting restrictions applicable to such Restricted Stock, Restricted Stock Units or Other Equity-Based Awards, or the underlying shares in respect thereof.

(l) **No Section 83(b) Elections Without Consent of Company.** No election under Section 83(b) of the Code or under a similar provision of law may be made unless expressly permitted by the terms of the applicable Award Agreement or by action of the Company in writing prior to the making of such election. If a Participant, in connection with the acquisition of shares of Common Stock under the Plan or otherwise, is expressly permitted to make such election and the Participant makes the election, the Participant shall notify the Company of such election within ten (10) days of filing notice of the election with the Internal Revenue Service or other governmental authority, in addition to any filing and notification required pursuant to Section 83(b) of the Code or other applicable provision.

(m) **Payments to Persons Other Than Participants.** If the Committee shall find that any Person to whom any amount is payable under the Plan is unable to care for the Participant's affairs because of illness or accident, or is a Beneficiary dies after benefits minor, or has died, then any payment due to such Beneficiary have commenced, but before they have been completed, and, in Person or the opinion of the Administrator, no person Participant's estate (unless a prior claim therefor has been designated to receive such remaining benefits, then such benefits shall made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to the deceased Beneficiary's estate.

A distribution to a Beneficiary Participant's spouse, child, relative, an institution maintaining or having custody of a Specified Employee is not considered such Person, or any other Person deemed by the Committee to be a proper recipient on behalf of such Person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(n) **Nonexclusivity of the Plan.** Neither the adoption of the Plan by the Committee nor the submission of the Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Committee or Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of equity-based awards otherwise than under the Plan, and such arrangements may be either applicable generally or only in specific cases.

(o) **No Trust or Fund Created.** Neither the Plan nor any Award shall create or be construed to create a Specified Employee trust or separate fund of any kind or a fiduciary relationship between any member of the Company Group, on the one hand, and a Participant or other Person, on the other hand. No provision of the Plan or any Award shall require the Company, for purposes the purpose of Sections 1.07 satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company be obligated to maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other service providers under general law.

(p) **Reliance on Reports.** Each member of the Committee and 8.01(e). each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of any member of the Company Group and/or any other information furnished in connection with the Plan by any agent of the Company or the Committee or the Board, other than himself or herself.

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7.03 (q) Separation from Service.

(a) **General Relationship to Other Benefits.** If provided by No payment under the Employer Plan shall be taken into account in Section 1.08, and subject to Section 1.08(e)(2), if a Participant has a Separation from Service, he will be entitled to determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit equal to (i) the vested percentage(s) plan of the value of the Matching Company except as otherwise specifically provided in such other plan or as required by applicable law.

(r) **Governing Law.** The Plan shall be governed by and Employer Contributions credited to his Account, as adjusted for income, expense, gain, or loss, such percentage(s) determined construed in accordance with the vesting schedule(s) and methodology selected by the Employer in Section 1.08, and (ii) the value internal laws of the Deferral Contributions State of Delaware applicable to his Account as adjusted for income, expense, gain, or loss. The amount payable under this Section 7.03 will be distributed in accordance with Article 8.

(b) **Elapsed Time Vesting.** Unless otherwise provided by contracts made and performed wholly within the Employer in Section 1.08, vesting shall be determined based on the elapsed time method. For purposes State of the elapsed time method, "Years of Service" means, with respect to any Participant or Inactive Participant, the number of whole years of his periods of service with the Employer and any Related Employers (as defined in Section 2.01(a)(26)(A)), subject to any exclusion elected by the Employer in Section 1.08(c). A Participant or Inactive Participant will receive credit for the aggregate of all time period(s) commencing with his Employment Commencement Date and ending on the date a break in service begins, unless any such years are excluded by Section 1.08(c). A Participant or Inactive Participant will also receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.

A break in service is a period of severance of at least 12 consecutive months. A "period of severance" is a continuous period of time beginning on the date the Participant or Inactive Participant incurs a Separation from Service, or if earlier, the 12-month anniversary of the date on which the Participant or Inactive Participant was otherwise first absent from service.

Notwithstanding the above, the Employer shall comply with any service crediting rules Delaware, without giving effect to the extent required by applicable law. conflict of laws provisions thereof. EACH PARTICIPANT WHO ACCEPTS AN AWARD IRREVOCABLY

WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION, OR OTHER PROCEEDING INSTITUTED BY OR AGAINST SUCH PARTICIPANT IN RESPECT OF THE PARTICIPANT'S RIGHTS OR OBLIGATIONS HEREUNDER.

(c) **Class Year Vesting Severability.** If provided any provision of the Plan or any Award or Award Agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Employer in Section 1.08, a Participant's or Inactive Participant's vested percentage in the Matching Contributions and/or Employer Contributions portion(s) of his Account Committee, such provision shall be determined pursuant construed or deemed amended to the class year method. Pursuant to such method, amounts attributable conform to the applicable contribution types are assigned to "class years" established laws, or if it cannot be construed or deemed amended without, in the records determination of the Plan. Such class years are years (calendar Committee, materially altering the intent of the Plan or non-calendar) the Award, such provision shall be construed or deemed stricken as to which the contribution is assigned by the Administrator, as described in the Service Agreement between the Trustee such jurisdiction, Person or Award and the Employer. remainder of the Plan and any such Award shall remain in full force and effect.

(t) **Obligations Binding on Successors.** The Participant's obligations of the Company under the Plan shall be binding upon any successor corporation or Inactive Participant's vested percentage in amounts attributable to a particular contribution is determined organization resulting from the beginning merger, consolidation or other reorganization of the applicable class year Company, or upon any successor corporation or organization succeeding to the date the Participant or Inactive Participant incurs a Separation from Service. For purposes

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substantially all of the class year method, a Participant or Inactive Participant is credited with a Year of Service on the first day of each such class year.

7.04 Vesting after Partial Distribution. If a distribution from a Participant's Account has been made to him at a time when his Account is less than 100% vested, the vesting schedule in Section 1.08 will thereafter apply only to amounts in his Account attributable to Matching Contributions assets and Employer Contributions credited after such distribution. The balance of his Account attributable to Matching Contributions and Employer Contributions immediately after such distribution will be subject to the following for the purpose of determining his interest therein.

At any relevant time prior to a forfeiture of any portion thereof under Section 7.05, a Participant's nonforfeitable interest in the portion of his Account described in the sentence immediately above will be equal to $P(AB + (RxD) - (RxD))$, where P is the nonforfeitable percentage at the relevant time determined under Section 1.08; AB is the account balance of such portion at the relevant time; D is the amount business of the distribution; and R is the ratio Company.

(u) **Section 409A of the account balance of such portion at the relevant time to the account balance of such portion after distribution. Following a forfeiture of any portion of such portion under Section 7.05 below, any balance with respect to such portion will remain fully vested and nonforfeitable.**

7.05 Forfeitures Code. Once payments are to commence to a Participant or Inactive Participant hereunder, the portion of such Account subject to the same payment commencement date but not yet vested, if

(i) Notwithstanding any (determined by his vested percentage at such payment commencement date) will be forfeited by him

7.06 Change in Control. If the Employer has elected to apply Section 1.07(a)(3)(D), then, upon a Change in Control, notwithstanding any other provision of the Plan to the contrary, all Participant Accounts shall be 100% vested.

7.07 Disability. If the Employer has elected to apply Section 1.08(e)(3), then, upon the date a Participant incurs a Disability, as defined in Section 1.07(a)(2), notwithstanding any other provision of the Plan to the contrary, all Accounts of such Participant shall be 100% vested.

7.08 Directors. Notwithstanding any other provision of the Plan to the contrary, all Accounts of a Participant who it is a Director shall be 100% vested at all times, including Accounts attributable to the Participant's service as an Employee, if any.

Article 8. Distribution of Benefits.

8.01 Events Triggering, and Form of, Distributions.

(a) Events triggering the distribution of benefits and the form of such distributions are described in Section 1.07(a), pursuant to the Employer's election and/or the Participant's election, as applicable.

(1) With respect to the form and time of distribution of amounts attributable to a Deferral Contribution, a Participant election must be made no later than

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the time by which the Participant must elect to make a Deferral Contribution, as described in Section 4.01.

(2) With respect to the form and time of distribution of amounts attributable to Matching or Employer Contributions, a Participant election must be made no later than the time by which a Participant would be required to make a Deferral Contribution as described in Section 4.01 with respect to the calendar year for which the Matching and/or Employer Contributions are credited. For purposes of applying Section 4.01(d) "Active Participant" shall have the meaning assigned in Section 2.01(a)(2)(B).

(3) Notwithstanding anything herein to the contrary, an election choosing a distribution trigger and payment method pursuant to Section 1.07(a)(1) will only be effective with respect to amounts attributable to contributions credited to the Participant's Account for the calendar year (or other deferral period described in 4.01(a) or (b)) to which such election relates. Amounts attributable to contributions credited to a Participant's account prior to the effective date of any new election will not be affected and will be paid in accordance with the otherwise applicable election.

(b) If the Employer elects to permit a distribution election change pursuant to Section 1.07(b), then any such distribution election change must satisfy (1) through (3) below:

(1) Such election may not take effect until at least 12 months after the date on which such election is made.

(2) In the case of an election related to a payment not on account of Disability, death or the occurrence of an Unforeseeable Emergency, the payment with respect to which such election is made must be deferred for a period of not less than five years from the date such payment would otherwise have been paid (or in the case of installment payments, five years from the date the first amount was scheduled to be paid).

(3) Any election related to a payment at a specified time or pursuant to a fixed schedule may not be made less than 12 months prior to the date the payment is scheduled to be paid (or in the case of installment payments, 12 months prior to the date the first amount was scheduled to be paid).

With respect to any initial distribution election, a Participant shall in no event be permitted to make more than one distribution election change.

(c) A Participant's entitlement to installments will not be treated as an entitlement to a series of separate payments.

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(d) If the Plan does not provide for Plan-level payment triggers pursuant to Section 1.07(a)(3), and the Participant does not designate in the manner prescribed by the Administrator the method of distribution, and/or the distribution trigger (if and as required), such method of distribution shall be a lump sum at Separation from Service.

(e) Notwithstanding anything herein to the contrary, with respect to any Specified Employee, if the applicable payment trigger is Separation from Service, then payment shall not commence before the date intended that is six months after the date of Separation from Service (or, if earlier, the date of death of the Specified Employee, pursuant to Section 7.02). Payments to which

a Specified Employee would otherwise be entitled during the first six months following the date of Separation from Service are delayed by six months.

(f) Notwithstanding anything herein to the contrary, the Administrator may, in its discretion, automatically pay out a Participant's vested Account in a lump sum, provided that such payment satisfies the requirements in (1) through (3) below:

- (1) Such payment results in the termination and liquidation of the entirety of the Participant's interest under the plan (as defined in 26 CFR section 1.409A-1(c)(2)), including all agreements, methods, programs, or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under 26 CFR section 1.409A-1(c)(2);
- (2) Such payment is not greater than the applicable dollar amount under Code section 402(g)(1)(B); and
- (3) Such exercise of Administrator discretion is evidenced in writing no later than the date of such payment.

(g) Notwithstanding anything herein to the contrary, the Administrator may, in its discretion, delay a payment otherwise required hereunder to a date after the designated payment date due to any of the circumstances described in (1) through (4) below, provided that the Administrator treats all payments to similarly situated Participants on a reasonably consistent basis.

- (1) In the event the Administrator reasonably anticipates that, if the payment were made as scheduled, the Employer's deduction with respect to such payment would not be permitted due to the application of Code section 162(m), provided the delay complies with the conditions in 26 CFR section 1.409A-2(b)(7)(i).
- (2) In the event the Administrator reasonably anticipates that the making of such payment will violate Federal securities laws or other applicable law,

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provided the delay complies with the conditions in 26 CFR section 1.409A-2(b)(7)(ii).

- (3) Upon such other events and conditions as the Commissioner of the Internal Revenue Service may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.
- (4) Upon a change in control event, provided the delay complies with conditions in 26 CFR section 1.409A-3(i)(5)(iv).

(h) Notwithstanding anything herein to the contrary, the Administrator may provide an election to change the time or form of a payment hereunder to satisfy the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 USC sections 4301 through 4344.

8.02 Notice to Trustee. The Administrator will provide direction to the Trustee, as provided in the Trust agreement, whenever any Participant or Beneficiary is entitled to receive benefits under the Plan. The Administrator's notice shall indicate the form, amount and frequency of benefits that such Participant or Beneficiary shall receive.

8.03 Unforeseeable Emergency Withdrawals. Notwithstanding anything herein to the contrary, a Participant may apply to the Administrator to withdraw some or all of his Account if such withdrawal is made on account of an Unforeseeable Emergency as determined by the Administrator in accordance with the requirements of and subject to the limitations provided in 26 CFR section 1.409A-3(i)(3).

Article 9. Amendment and Termination.

9.01 Amendment by Employer. The Employer reserves the authority to amend the Plan in its discretion. Any such amendment notwithstanding, no Participant's Account shall be reduced by such amendment below the amount to which the Participant would have been entitled if he had voluntarily left the employ of the Employer immediately prior to the date of the change.

9.02 Termination. The Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may terminate the Plan at any time by written notice delivered to the Trustee without any liability hereunder for any such discontinuance or termination. Such termination shall comply with 26 CFR section 1.409A-3(j)(4)(ix) and other applicable guidance.

Article 10. Miscellaneous.

10.01 Communication to Participants. The Plan will be communicated to all Participants by the Employer promptly after the Plan is adopted.

10.02 Limitation of Rights. Neither the establishment of the Plan and the Trust, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the

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Employer, Administrator or Trustee, except as provided herein; in no event will the terms of employment or service of any individual be modified or in any way affected hereby.

10.03 Nonalienability of Benefits. The benefits provided hereunder will not be subject to alienation, assignment, garnishment, attachment, execution or levy of any kind, either voluntarily or involuntarily, and any attempt to cause such benefits to be so subjected will not be recognized, except to such extent as may be required by law and as provided pursuant to a domestic relations order (defined in Code section 414(p)(1)(B)), as determined by the Administrator. Pursuant to a domestic relations order, payments may be accelerated to a time sooner, and pursuant to a schedule more rapid, than the time and schedule applicable in the absence of the domestic relations order, provided that such payment pursuant to such order is not made to the Participant and provided further that this provision shall not be construed to provide the Participant discretion regarding whether such payment time or schedule will be accelerated.

10.04 Facility of Payment. In the event the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may disburse such payments, or direct the Trustee to disburse such payments, as applicable, to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under State law for the care and control of such recipient. The receipt by such person or institution of any such payments shall be complete acquittance therefore, and any such payment to the extent thereof, shall discharge the liability of the Trust for the payment of benefits hereunder to such recipient.

10.05 Plan Records. The Administrator shall maintain the records of the Plan on a calendar-year basis.

10.06 USERRA. Notwithstanding anything herein to the contrary, the Administrator shall permit any Participant election and make any payments hereunder required by the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 USC 4301-4334.

10.07 Governing Law. The Plan and the accompanying Adoption Agreement will be construed, administered and enforced according to ERISA, and to the extent not preempted thereby, the laws of the State in which the Employer has its principal place of business, without regard to the conflict of laws principles of such State.

Article 11. Plan Administration.

11.01 Powers and Responsibilities of the Administrator. The Administrator has the full power and the full responsibility to administer the Plan in all of its details, subject, however, to the applicable requirements of ERISA. The Administrator's powers and responsibilities include, but are not limited to, the following:

- (a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;

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- (b) To interpret the Plan, its interpretation thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To administer the claims and review procedures specified in Section 11.02;
- (e) To compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;
- (f) To determine Plan comply with Section 409A of the person or persons to whom such benefits will be paid;
- (g) To authorize the payment Code, and all provisions of benefits;
- (h) To appoint such agents, counsel, accountants, and consultants as may be required to assist in administering the Plan; and
- (i) By written instrument, to allocate and delegate its responsibilities, including the formation of an administrative committee to administer the Plan.

11.02 Claims and Review Procedures.

- (a) **Claims Procedure.** If any person believes he is being denied any rights or benefits under the Plan such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) information as to the steps to be taken if the person wishes to submit a request for review, including a statement of the such person's right to bring a civil action under ERISA section 502(a) following an adverse determination upon review. Such notification will be given within 90 days after the claim is received by the Administrator (or within 180 days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial 90-day period).

If the claim concerns disability benefits under the Plan, the Plan Administrator must notify the claimant in writing within 45 days after the claim has been filed in order to deny it. If special circumstances require an extension of time to process the claim, the Plan Administrator must notify the claimant before the end of the 45-day period that the claim may take up to 30 days longer to process. If special circumstances still prevent the resolution of the claim, the Plan Administrator may then only take up to another 30 days after giving the claimant notice before the end of the original 30-day extension. If the Plan Administrator gives the claimant notice that the

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claimant needs to provide additional information regarding the claim, the claimant must do so within 45 days of that notice.

- (b) **Review Procedure.** Within 60 days after the date on which a person receives a written notice of a denied claim (or, if applicable, within 60 days after the date on which such denial is considered to have occurred), such person (or his duly authorized representative) may (i) file a written request with the Administrator for a review of his denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. This written request may include comments, documents, records, and other information relating to the claim for benefits. The claimant shall be provided, upon the claimant's request, and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits. The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The Administrator will notify such person of its decision in writing. Such notification will be written interpreted in a manner calculated to be understood by such person consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code. Each Participant is solely responsible and will contain specific reasons liable for the decision as well as specific references to pertinent Plan provisions. The decision on review will be made within 60 days after the request for review is received by the Administrator (or within 120 days, if special circumstances require an extension of time for processing the request, such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period). The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review.

If the initial claim was for disability benefits under the Plan and has been denied by the Plan Administrator, the claimant will have 180 days from the date the claimant received notice of the claim's denial in which to appeal that decision. The review will be handled completely independently of the findings and decision made regarding the initial claim and will be processed by an individual who is not a subordinate of the individual who denied the initial claim. If the claim requires medical judgment, the individual handling the appeal will consult with a medical professional whom was not consulted regarding the initial claim and who is not a subordinate of anyone consulted regarding the initial claim and identify that medical professional to the claimant.

The Plan Administrator shall provide the claimant with written notification of a plan's benefit determination on review. In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant – the specific reason or reasons for the adverse determinations, reference to the specific plan provisions on which the benefit determination is based, a statement that the claimant is entitled to receive, upon the

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claimant's request and free of charge, reasonable access to, and copies satisfaction of all documents, records, taxes and other information relevant to the claim for benefits.

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Exhibit 10.4

The CORPORATEplanfor RetirementSM EXECUTIVE PLAN

Adoption Agreement

IMPORTANT NOTE

This document has not been approved by the Department of Labor, the Internal Revenue Service or any other governmental entity. An Employer must determine whether the plan is subject to the Federal securities laws and the securities laws of the various states. An Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is "unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees" under the Employee Retirement Income Security Act with respect to the Employer's particular situation. Fidelity Management Trust Company, its affiliates and employees cannot and do not provide legal or tax advice or opinions in connection with this document. This document does not constitute legal or tax advice or opinions and is not intended or written to be used, and it cannot be used by any taxpayer, for the purposes of avoiding penalties that may be imposed on or in respect of such Participant in connection with the taxpayer. This document must be reviewed by the Employer's attorney prior to adoption.

ADOPTION AGREEMENT

ARTICLE 1

1.01 PLAN INFORMATION

(a) Name of Plan:

This is The Brickman Group, Ltd. LLC Executive Savings Plan (the "Plan").

(b) Plan Status (Check one):

(1) Adoption Agreement effective date: 10/01/2008.

(2) The Adoption Agreement effective date is (Check (A) or check (including any taxes and complete (B)):

A new Plan effective date _____

An amendment and restatement penalties under Section 409A of the Plan. The original effective date Code), and neither the Service Recipient nor any other member of the Plan was: 4/1/2000.

(c) Name Company Group shall have any obligation to indemnify or otherwise hold such Participant (or any beneficiary) harmless from all of Administrator, if not such taxes or penalties. With respect to any Award that is considered "deferred compensation" subject to 409A of the Employer:

1.02 EMPLOYER

(a) Employer Name: The Brickman Group Ltd. LLC

(b) The term "Employer" includes the following Related Employer(s) (as defined in Section 2.01(a)(25)) participating in the Plan:

1.03 COVERAGE

(Check (a) and/or (b))

The following Employees are eligible to participate Code, references in the Plan (Check (1) or (2)):

Only those Employees to "termination of employment" (and substantially similar phrases) shall mean "separation from service" within the meaning of Section 409A of the Code. For purposes of Section 409A of the Code, each of the payments that may be made in respect of any Award granted under the Plan is designated in writing by the Employer, which writing is hereby incorporated herein.

Only those Employees in the eligible class described below:

Managers and other highly compensated employees of the Employer who are designated by the Employer and approved by the Committee.

(a) The following Directors are eligible to participate (ii) Notwithstanding anything in the Plan (Check (1) or (2)).

Only those Directors designated in writing by to the Employer, which writing contrary, if a Participant is hereby incorporated herein.

All Directors, effective as a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the later Code, no payments in respect of any Awards that are "deferred compensation" subject to Section 409A of the date in 1.01(b) or Code and which would otherwise be payable upon the date the Director becomes a Director.

(Note: A designation in Section 1.03(a)(1) or Section 1.03(b)(1) or a description in Section 1.03(a)(2) must include the effective date of such participation.)

1.04

COMPENSATION

(If Section 1.03(a) is selected, select (a) or (b). If Section 1.03(b) is selected, complete (c))

For purposes of determining all contributions under the Plan:

Compensation shall be as defined, with respect to Employees, in The Brickman Group Ltd, LLC Employee Retirement Investment Plan maintained by the Employer:

to the extent it is in excess of the limit imposed under Code section 401(a)(17).

notwithstanding the limit imposed under Code section 401(a)(17)

Compensation shall be Participant's "separation from service" (as defined in Section 2.01(a)(9) with respect to Employees (Check (1), and/or (2) below, if, and as, appropriate):

but excluding the following:

but excluding bonuses, except those bonuses listed in the table in Section 1.05(a)(2).

Compensation shall be as defined in Section 2.01(a)(9)(c) with respect to Directors, but excluding the following:

1.05

CONTRIBUTIONS ON BEHALF OF EMPLOYEES(a) **Deferral Contributions (Complete all that apply):**

Deferral Contributions. Subject to any minimum or maximum deferral amount provided below, the Employer shall make a Deferral Contribution in accordance with, and subject to, Section 4.01 on behalf of each Participant who has an executed salary reduction agreement in effect with the Employer for the applicable calendar year (or portion 409A of the applicable calendar year).

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Deferral Contributions Type of Compensation	Dollar Amount		% Amount		
	Min	Max	Min	Max	
Base Salary			0	70	

(Note: With respect to each type of Compensation, list the minimum and maximum dollar amounts or percentages as whole dollar amounts or whole number percentages.)

Deferral Contributions with respect to Bonus Compensation only. The Employer requires Participants to enter into a special salary reduction agreement to make Deferral Contributions with respect to one or more Bonuses, subject to minimum and maximum deferral limitations, as provided in the table below.

Deferral Contributions Type of Bonus	Treated As		Dollar Amount		% Amount	
	Performance Based	Non-Performance Based	Min	Max	Min	Max
Discretionary Bonus	Yes				0	70

(Note: With respect to each type of Bonus, list the minimum and maximum dollar amounts or percentages as whole dollar amounts or whole number percentages. In the event a bonus identified as a Performance-based Bonus above does not constitute a Performance-based Bonus with respect to any Participant, such Bonus will Code shall be treated as a Non-Performance-based Bonus with respect to such Participant.)(b) **Matching Contributions (Choose (1) or (2) below, and (3) below, as applicable):**

The Employer shall make a Matching Contribution on behalf of each Employee Participant in an amount described below:

___ % of the Employee Participant's Deferral Contributions for the calendar year.

The amount, if any, declared by the Employer in writing, which writing is hereby incorporated herein.

Other: See Attachment B

Matching Contribution Offset. For each Employee Participant who has made elective contributions (as defined in 26 CFR section 1.401(k)-6 ("QP Deferrals")) of the maximum permitted under Code section 402(g), or the maximum permitted under the

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terms of the _____ Plan (the "QP"), to the QP, the Employer shall make a Matching Contribution in an amount equal to (A) minus (B) below:

(A) The matching contributions (as defined in 26 CFR section 1.401(m)-1(a)(2) ("QP Match")) that the Employee Participant would have received under the QP on the sum of the Deferral Contributions and the Participant's QP determined as though—

- no limits otherwise imposed by the tax law applied to such QP match; and
- the Employee Participant's Deferral Contributions had been made to the QP.

(B) The QP Match actually made to such Employee Participant under the QP for the applicable calendar year.

Provided, however, that the Matching Contributions made on behalf of any Employee Participant pursuant to this Section 1.05(b) (2) shall be limited as provided in Section 4.02 hereof.

Matching Contribution Limits (Check the appropriate box (es)):

Deferral Contributions in excess of ___ % of the Employee Participant's Compensation for the calendar year shall not be considered for Matching Contributions.

Matching Contributions for each Employee Participant for each calendar year shall be limited to \$_____

(c) Employer Contributions

Fixed Employer Contributions. The Employer shall make an Employer Contribution on behalf of each Employee Participant in an amount determined as described below:

Discretionary Employer Contributions. The Employer may make Employer Contributions to the accounts of Employee Participants in any amount (which amount may be zero), as determined by the Employer in its sole discretion from time to time in writing, which is hereby incorporated herein.

1.06 CONTRIBUTIONS ON BEHALF OF DIRECTORS

Director Deferral Contributions

The Employer shall make a Deferral Contribution in accordance with, and subject to, Section 4.01 on behalf of each Director Participant who has an executed deferral agreement in effect with the Employer for the applicable calendar year (or portion of the applicable calendar year), which deferral agreement shall be subject to any minimum and/or maximum deferral amounts provided in the table below.

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Deferral Contributions Type of Compensation	Dollar Amount		% Amount	
	Min	Max	Min	Max

(Note: With respect to each type of Compensation, list the minimum and maximum dollar amounts or percentages as whole dollar amounts or whole number percentages.)

(a) Matching and Employer Contributions:

- Matching Contributions. The Employer shall make a Matching Contribution on behalf of each Director Participant in an amount determined as described below:
- Fixed Employer Contributions. The Employer shall make an Employer Contribution on behalf of each Director Participant in an amount determined as described below:
- Discretionary Employer Contributions. The Employer may make Employer Contributions to the accounts of Director Participants in any amount (which amount may be zero), as determined by the Employer in its sole discretion from time to time, in a writing, which is hereby incorporated herein.

1.07 DISTRIBUTIONS

The form and timing of distributions from the Participant's vested Account shall be made consistent with the elections in this Section 1.07.

(a) (1) Distribution options to be provided to Participants

	(A) Specified Date	(B) Specified Age	(C) Separation From Service	(D) Earlier of Separation or Age	(E) Earlier of Separation or Specified Date	(F) Disability	(G) Change in Control	(H) Death
Deferral Contribution	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Lump Sum <input type="checkbox"/>

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	Lump Sum <input type="checkbox"/> Installments	Lump Sum <input type="checkbox"/> Installments	Lump Sum <input checked="" type="checkbox"/> Installments	Lump Sum <input type="checkbox"/> Installments	Lump Sum <input checked="" type="checkbox"/> Installments	Lump Sum <input type="checkbox"/> Installments	Lump Sum <input type="checkbox"/> Installments	Lump Sum <input type="checkbox"/> Installments
Matching Contributions	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input checked="" type="checkbox"/> Lump Sum <input checked="" type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input checked="" type="checkbox"/> Lump Sum <input checked="" type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments
Employer Contributions	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Installments

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(Note: If the Employer elects (F), (G), or (H) above, the Employer must also elect (A), (B), (C), (D), or (E) above, and the Participant must also elect (A), (B), (C), (D), or (E) above. In the event the Employer elects only a single payment trigger and/or payment method above, then such single payment trigger and/or payment method shall automatically apply to the Participant. If the employer elects to provide for

payment upon a specified date or age, and the employer applies a vesting schedule to amounts that may be subject to such payment trigger(s), the employer must apply a minimum deferral period, the number of years of which must be greater than the number of years required for 100% vesting in any such amounts. If the employer elects to provide for payment upon disability and/or death; and the employer applies a vesting schedule to amounts that may be subject to such payment trigger, the employer must also elect to apply 100% vesting in any such amounts upon disability and/or death.)

- A Participant incurs a Disability when the Participant (Check at least one if Section 1.07(a)(1)(F) or if Section 1.08(e)(3) is elected):
 - is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.
 - is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Employer.
 - is determined to be totally disabled by the Social Security Administration or the Railroad Retirement Board.
 - is determined to be disabled pursuant to the following disability insurance program: _____ the definition of disability under which complies with the requirements in regulations under Code section 409A

(Note: If more than one box above is checked, then the Participant will have a Disability if he satisfies at least one of the descriptions corresponding to one of such checked boxes.)

- Regardless of any payment trigger and, as applicable, payment method, to which the Participant would otherwise be subject pursuant to (I) above, the first to occur of the following Plan-level payment triggers will cause payment to the Participant commencing pursuant to Section 1.07(c)(1) below in a lump sum, provided such Plan-level payment trigger occurs prior to the payment trigger to which the Participant would otherwise be subject.

Payment Trigger

- Separation from Service prior to:
- Separation from Service
- Death

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- Change in Control
 - (b) Distribution Election Change
 - A Participant
 - shall
 - shall not
 - be permitted to modify a scheduled distribution election in accordance with Section 8.01(b) hereof.
 - (c) Commencement of Distributions
 - (1) Each lump sum distribution and the first distribution in a series of installment payments (if applicable) shall commence as in (A), (B) or (C) below:

(A) <input checked="" type="checkbox"/>	Monthly on the 15th day of the month which day next follows the applicable triggering event described in 1.07(a).
(B) <input type="checkbox"/>	Quarterly on the _____ day of the following months _____, _____, _____ or _____ (list one month in each calendar quarter) which day next follows the applicable triggering event described in 1.07(a).

(C)

Annually on the ___ day of _____ (month) which day next follows the applicable triggering event described in 1.07(a).

(Note: Notwithstanding the above: a six-month delay shall be imposed with respect to certain distributions to Specified Employees; a Participant who chooses payment on a Specified Date will choose a month, year or quarter (as applicable) only, and payment will be made on the applicable date elected in (A), (B) or (C) above that falls within such month, year or quarter elected by the Participant.)

(2) The commencement of distributions pursuant to the events elected in Section 1.07(a)(1) and Section 1.07(a)(3) shall be by application of the following:

Separation from Service Event Delay — Separation from Service will be treated as not having occurred for ___ is six (6) months after the date of such event.

Plan Level Delay — Participant's "separation from service" or, if earlier, the date of the Participant's death. Following any applicable six (6) month delay, all distribution events (other than those based on Specified Date or Specified Age) will be treated as not having occurred for ___ days (insert number of days but not more than 30).

(d) **Installment Frequency and Duration**

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If installments are available under the Plan pursuant to Section 1.07(a), a Participant shall be permitted to elect that the installments such delayed payments will be paid (Complete 1 and 2 below):

(1) at the following intervals:

Monthly commencing on the day elected in Section 1.07(c)(1).

Quarterly commencing on the day elected in Section 1.07(c)(1) (with payments made at three-month intervals thereafter).

Annually commencing on the day elected in Section 1.07(c)(1).

(2) over the following term(s) (Complete either (A) or (B)):

Any term of whole years between 2 (minimum of 1) and 15 (maximum of 30).

Any of the whole year terms selected below.

<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6
<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> 9	<input type="checkbox"/> 10	<input type="checkbox"/> 11	<input type="checkbox"/> 12
<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16	<input type="checkbox"/> 17	<input type="checkbox"/> 18
<input type="checkbox"/> 19	<input type="checkbox"/> 20	<input type="checkbox"/> 21	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24
<input type="checkbox"/> 25	<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28	<input type="checkbox"/> 29	<input type="checkbox"/> 30

(Note: Only elect a term of one year if Section 1.07(d)(1)(A) and/or Section 1.07(d)(1)(B) is elected above.)

(e) **Conversion to Lump Sum**

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Notwithstanding anything herein to the contrary, if the Participant's vested Account at the time such Account becomes payable to him hereunder does not exceed \$___ distribution of the Participant's vested Account shall automatically be made in the form of a single lump sum at the time prescribed earliest date permitted under Section 409A of the Code that is also a business day.

(iii) Unless otherwise provided by the Committee in Section 1.07(c)(1).

(f) **Distribution Rules Applicable to Pre-effective Date Accruals**

Benefits accrued under an Award Agreement or otherwise, in the Plan (subject to Code section 409A) prior to event that the date timing of payments in Section 1.01(b)(1) above are respect of any Award (that would otherwise be considered "deferred compensation" subject to distribution rules not described in Section 1.07(a) through (e), and such rules are described in Attachment A Re: PRE EFFECTIVE DATE ACCRUAL DISTRIBUTION RULES.

1.08 VESTING SCHEDULE

(a) (1) The Participant's vested percentage in Matching Contributions elected in Section 1.05(b) shall 409A of the Code would be based the following schedule and unless Section 1.08(a)(2) is checked below will be based on the elapsed time method as described in 7.03(b).

<u>Years of Service</u>	<u>Vesting %</u>
0	100
1	100

Vesting shall be based on the class year method as described in Section 7.03(c).
 (b) (1) The Participant's vested percentage in Employer Contributions elected in Section 1.05(c) shall be based upon the following and unless Section 1.08(b)(2) is checked below will be based on the elapsed time method as described in Section 7.03(b).
 Vesting shall be based on the class year method as described in Section 7.03(c).
 Years of Service shall exclude (Check one):
 for new plans, service prior to the Effective Date as defined in Section 1.01(b)(2)(A).
 for existing plans converting from another plan document, service prior to the original Effective Date as defined in Section 1.01(b)(2)(B).
(Note: Do not elect to apply this Section 1.08(c) if vesting is based only on the class year method.)
 (c) Notwithstanding anything to the contrary herein, a Participant will forfeit his Matching Contributions and Employer Contributions (regardless of whether vested) accelerated upon the occurrence of the following event(s):

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(Note: Contributions with respect to Directors, which are 100% vested at all times, are subject to the rule in this subsection (d).)

(d) A Participant will be 100% vested in his Matching Contributions and Employer Contributions upon (Check the appropriate box(es)):

Retirement eligibility is the date the Participant attains age ____ and completes ____ Years of Service, as defined in Section 7.03(b).
 Death.
 The date on which the Participant becomes disabled, as determined under Section 1.07(a)(2).
(Note: Participants will automatically vest upon (A) a Change in Control, if Section 1.07(a)(1)(G) is elected.)
 Years of Service in Section 1.08 (a)(1) and Section 1.08 (b)(1) shall include service with the following employers:

1.09 INVESTMENT DECISIONS

A Participant's Account no such acceleration shall be treated as invested permitted unless the event

giving rise to the Change in Control satisfies the definition of a change in the **Permissible Investments** as directed by ownership or effective control of a corporation, or a change in the Participant unless otherwise provided below.

1.10 ADDITIONAL PROVISIONS

The Employer may elect Option below and complete the Superseding Provisions Addendum to describe overriding provisions that are not otherwise reflected in this Adoption Agreement.

The Employer has completed the Superseding Provisions Addendum to reflect the provisions ownership of a substantial portion of the Plan that supersede provisions assets of this Adoption Agreement and/or the Basic Plan Document.

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EXECUTION PAGE

(Fidelity's Copy)

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed 11th day of September 2008.

Employer The Brickman Group, Ltd. LLC

By /s/Anthony J. Skarupa

Title Chief Financial Officer

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EXECUTION PAGE

(Employer's Copy)

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed 11th day of September 2008.

Employer The Brickman Group, Ltd. LLC

By /s/Anthony J. Skarupa

Title Chief Financial Officer

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AMENDMENT EXECUTION PAGE

(Fidelity's Copy)

Plan Name: The Brickman Group, Ltd. LLC Executive Savings Plan (the "Plan")

Employer: The Brickman Group Ltd. LLC

(Note: These execution pages are to be completed in the event the Employer modifies any prior election(s) or makes a new election(s) in this Adoption Agreement. Attach the amended page(s) of the Adoption Agreement to these execution pages.)

The following section(s) of the Plan are hereby amended effective as of the date(s) set forth below:

Section Amended	Effective Date

IN WITNESS WHEREOF, the Employer has caused this Amendment to be executed on the date below.

Employer:

By:

Title:

Date:

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AMENDMENT EXECUTION PAGE

(Employer's Copy)

Plan Name: The Brickman Group, Ltd. LLC Executive Savings Plan (the "Plan")

Employer: The Brickman Group Ltd. LLC

(Note: These execution pages are to be completed in the event the Employer modifies any prior election(s) or makes a new election(s) in this Adoption Agreement. Attach the amended page(s) of the Adoption Agreement to these execution pages.)

Section Amended	Effective Date

IN WITNESS WHEREOF, the Employer has caused this Amendment to be executed on the date below.

Employer:

By:

Title:

Date:

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ATTACHMENT A

Plan Name: The Brickman Group, Ltd. LLC Executive Savings Plan (the "Plan")

Article VI. PAYMENT OF BENEFITS

6.1 Distribution Elections

A Participant shall specify the time and form of distribution separately for his or her Accounts for each Plan Year he or she makes a Deferral Election.

6.2 Timing of Distributions — Benefit Distribution Date

(a) **Elected by Participant.** A Participant shall separately elect, at the time of each deferral of Compensation or Performance-based Compensation, to receive the associated distribution from his or her Account in accordance with one of the following three options:

(1) The earlier of:

((a)) A specific date which occurs no earlier than during the second Plan Year following the Plan Year in which the amounts designated for distribution are credited; or

((b)) As soon as administratively feasible following the date of Separation from Service with the Company;

(2) Separation from Service with the Company; or

(3) A specific date which occurs no earlier than during the second Plan Year following the Plan Year in which the amounts designated for distribution are credited.

(b) **Failure to Elect.** In the event a Participant fails to provide a Benefit Distribution Date, Section 6.2(a)(2) of the Plan shall automatically apply. Active employees of the Company may revise the Benefit Distribution Date in accordance with the revised distribution election provisions in Section 6.4 of the Plan.

6.3 Form of Distribution

(a) **Elected by Participant.** A Participant shall separately elect, at the time of each deferral of Compensation or Performance-based Compensation, the associated form of distribution from his or her Account in a manner prescribed by the Committee in accordance with one of the following two payment options:

(1) A single lump sum payment, or

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(2) Monthly, quarterly or annual installments, with an installment term of between two (2) and fifteen (15) years.

(b) **Failure to Elect.** In the event a Participant fails to provide the form of distribution, Section 6.3(a)(1) of the Plan shall automatically apply.

6.4 Permitted Acceleration of Payment

Notwithstanding the Participant's elected time and form of distribution corporation pursuant to Section 6.2 409A of the Plan and Code; or (B) a Disability, no such acceleration shall be permitted unless the restrictions Disability also satisfies the definition of "Disability" pursuant to Section 6.3 409A of the Plan, the time or schedule of a payment Code.

(v) **Clawback/Repayment.** All Awards shall be accelerated in the following circumstances:

(a) Payment shall be made subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with (i) any clawback, forfeiture or other similar policy adopted by the Board or the Committee and as in effect from time to time; and (ii) applicable law. Further, to the extent that the Participant receives any amount in excess of the amount that the Participant should otherwise have received under the terms of the Award for any reason (including,

without limitation, by reason of a **domestic relations** financial restatement, mistake in calculations or other administrative error), the Participant shall be required to repay any such excess amount to the Company.

(w) **Right of Offset.** The Company will have the right to offset against its obligation to deliver shares of Common Stock (or other property or cash) under the Plan or any Award Agreement any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, repayment obligations under any Awards, or amounts repayable to the Company pursuant to tax equalization, housing, automobile or other employee programs) that the Participant then owes to any member of the Company Group and any amounts the Committee otherwise deems appropriate pursuant to any tax equalization policy or agreement. Notwithstanding the foregoing, if an Award is "deferred compensation" subject to Section 409A of the Code, the Committee will have no right to offset against its obligation to deliver shares of Common Stock (or other property or cash) under the Plan or any Award Agreement if such offset could subject the Participant to the additional tax imposed under Section 409A of the Code in respect of an outstanding Award.

(x) **Expenses; Titles and Headings.** The expenses of administering the Plan shall be borne by the Company Group. The titles and headings of the sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

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Exhibit 10.3

ANNEX B

BRIGHTVIEW HOLDINGS, INC.

2018 EMPLOYEE STOCK PURCHASE PLAN

(As proposed to be amended March 5, 2024)

1. Purpose. The purpose of the Plan is to provide employees of the Company and its Designated Companies with an opportunity to purchase Common Stock through accumulated Contributions. The Company intends for the Plan to have two components: a Code Section 423 Component ("423 Component") and a non-Code Section 423 Component ("Non-423 Component"). The Company's intention is to have the 423 Component of the Plan qualify as an "employee stock purchase plan" under Section 423 of the Code. The provisions of the 423 Component, accordingly, will be construed so as to extend and limit Plan participation in a uniform and nondiscriminatory basis consistent with the requirements of Section 423 of the Code. In addition, this Plan authorizes the grant of an option to purchase shares of Common Stock under the Non-423 Component that does not qualify as an "employee stock purchase plan" under Section 423 of the Code; such an option will be granted pursuant to rules, procedures or sub-plans adopted by the Administrator designed to achieve tax, securities laws or other objectives for Eligible Employees and the Company. Except as otherwise provided herein, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

2. Definitions.

(a) **"Administrator"** means the Committee or the Board.

(b) **"Affiliate"** means any entity, other than a Subsidiary, that is an "affiliate" within the meaning of Rule 12b-2 promulgated under Section 12 of the Exchange Act.

(c) **"Applicable Laws"** means the requirements relating to the administration of equity-based awards and the related issuance of shares of Common Stock under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable securities and exchange control laws of any foreign country or jurisdiction where options are, or will be, granted under the Plan.

(d) **"Beneficial Owner"** means a beneficial owner as determined under Rule 13d-3 under the Exchange Act.

(e) **"Board"** means the Board of Directors of the Company.

(f) **"Change in Control"** means

(i) the acquisition (whether by purchase, merger, consolidation, combination or other similar transaction) by any Person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% (on a fully diluted basis) of either (A) the then outstanding shares of Common Stock, taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Common Stock; or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors; provided, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (I) any acquisition by the Company or any Affiliate; or (II) any acquisition by any employee benefit plan sponsored or maintained by the Company or any Affiliate; or (III) in respect of any Common Stock held by a particular Participant under this Plan, any acquisition by the Participant or any group of Persons including the Participant (or any entity controlled by the Participant or any group of Persons including the Participant);

(ii) during any period of twelve (12) months, individuals who, at the beginning of such period, constitute the Board (the **"Incumbent Directors"**) cease for any reason to constitute at least a majority of the Board; provided, that any person becoming a director subsequent to the Effective Date, whose election or nomination for election was approved by a vote of at least

two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination) shall be an Incumbent Director; provided, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest, as such terms are used in Rule 14a-12 of Regulation 14A promulgated under the Exchange Act, with respect to directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall be deemed to be an Incumbent Director; or

(iii) the sale, transfer or other disposition of all or substantially all of the assets of the Company and its Subsidiaries (taken as a whole) to any Person that is not an Affiliate of the Company.

(g) "Code" means the U.S. Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or U.S. Treasury Regulation thereunder will include such Section or regulation, any valid regulation or other official applicable guidance promulgated under such Section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such Section or regulation.

(h) "Committee" means the Compensation Committee of the Board, and any successor committee thereto or such other committee of the Board as may be designated by the Board to administer this Plan in whole or in part, including any subcommittee of the Board as designated by the Board in accordance with Section 14 hereof.

(i) "Common Stock" means the common stock, par value \$0.01 per share, of the Company.

(j) "Company" means BrightView Holdings, Inc., a Delaware corporation, or any successor thereto.

(k) "Compensation" means an Eligible Employee's base straight time gross earnings, commissions (to the extent such commissions are an integral, recurring part of compensation), incentive compensation, bonuses, payments for overtime and shift premium, but exclusive of payments for equity compensation income and other similar compensation. The Administrator, in its discretion, may, on a uniform and nondiscriminatory basis, establish a different definition of Compensation for a subsequent Offering Period.

(l) "Contributions" means the payroll deductions and other additional payments that the Company may permit to be made by a Participant to fund the exercise of options granted pursuant to the Plan.

(m) "Designated Company" means any Subsidiary or Affiliate that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan. For purposes of the 423 Component, only the Company and its Subsidiaries may be Designated Companies; provided, that at any given time, a Subsidiary that is a Designated Company under the 423 Component shall not be a Designated Company under the Non-423 Component.

(n) "Director" means a member of the Board.

(o) "EEA" shall have the meaning set forth in Section 8(c) of the Plan.

(p) "EEA Limit" shall have the meaning set forth in Section 8(c) of the Plan.

(q) "Eligible Employee" means any individual who is a common law employee providing services to the Company or a Designated Company and is customarily employed for at least twenty (20) hours per week and more than five (5) months in any calendar year by the Employer, or any lesser number of hours per week and/or number of months in any calendar year established by the Administrator (if required under Applicable Law) for purposes of any separate Offering or for an Eligible Employee participating in the Non-423 Component. For purposes of the Plan, the employment relationship will be treated as continuing intact while the individual is on sick leave or other

leave of absence that the Employer approves or is legally protected under Applicable Laws. Where the period of leave exceeds

three (3) months and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated three (3) months and one (1) day following the commencement of such leave. The Administrator, in its discretion, from time to time may, prior to an Enrollment Date for all options to be granted on such Enrollment Date in an Offering, determine (for each Offering under the 423 Component, on a uniform and nondiscriminatory basis or as otherwise permitted by Treasury Regulation Section 1.423-2) that the definition of Eligible Employee will or will not include an individual if he or she: (i) has not completed at least two (2) years of service since his or her last hire date (or such lesser period of time as may be determined by the Administrator in its discretion), (ii) customarily works not more than twenty (20) hours per week (or such lesser period of time as may be determined by the Administrator in its discretion), (iii) customarily works not more than five (5) months per calendar year (or such lesser period of time as may be determined by the Administrator in its discretion), (iv) is a highly compensated employee within the meaning of Section 414(q) of the Code, or (v) is a

highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to the disclosure requirements of Section 16 (a) of the Exchange Act; provided, that the exclusion is applied with respect to each Offering under the 423 Component in an identical manner to all highly compensated employees of the Employer whose employees are participating in that Offering. Each exclusion shall be applied with respect to an Offering under a 423 Component in a manner complying with U.S. Treasury Regulation Section 1.423-2(e)(2)(ii). Such exclusions may be applied with respect to an Offering under the Non-423 Component without regard to the limitations of Treasury Regulation Section 1.423-2.

(r) "Employer" means the employer of the applicable Eligible Employee(s).

(s) "Enrollment Date" means the first Trading Day of each Offering Period.

(t) "Enrollment Window" is defined in Section 5(a) of the Plan.

(u) "EU Prospectus Directive" shall have the meaning set forth in Section 8(c) of the Plan.

(v) "Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

(w) "Exercise Date" means the first Trading Day on or after November 14 of each Purchase Period.

(x) "Fair Market Value" of a share of Common Stock means, as of a particular date, (1) if shares of Common Stock are listed on a national securities exchange, the closing sales price per share of Common Stock on the consolidated transaction reporting system for the principal national securities exchange on which shares of Common Stock are listed on that date, or, if there shall have been no such sale so reported on that date, on the last preceding date on which such a sale was so reported, (2) if the Common Stock is not so listed, the average of the closing bid and asked price on that date, or, if there are no quotations available for such date, on the last preceding date on which such quotations shall be available, as reported by an inter-dealer quotation system, or (3) if none of the above are applicable, the Fair Market Value of a share of Common Stock as determined in good faith by the Committee.

(y) "Fiscal Year" means the fiscal year of the Company.

(z) "423 Component" is defined in Section 1 of the Plan.

(aa) "Group" shall have the meaning given the term for purposes of Section 13(d)(3) of the Exchange Act.

(bb) "New Exercise Date" means a new Exercise Date if the Administrator shortens any Offering Period then in progress.

(cc) "Non-423 Component" is defined in Section 1 of the Plan.

(dd) "Offering" means an offer under the Plan of an option that may be exercised during an Offering Period as further described in Section 4 of the Plan. For purposes of the Plan, the Administrator may designate separate Offerings under the Plan (the terms of which need not be identical) in which

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Eligible Employees of one or more Employers will participate, even if the dates of the applicable Offering Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by U.S. Treasury Regulation Section 1.423-2(a)(1), the terms of each Offering need not be identical; provided, that the terms of the Plan and an Offering together satisfy U.S. Treasury Regulation Section 1.423-2(a)(2) and (a)(3).

(ee) "Offering Periods" means the periods of approximately twelve (12) months or such other period or periods set by the Administrator during which an option may be granted pursuant to the Plan and may be exercised, as determined under Section 4 of the Plan. The duration and timing of Offering Periods may be changed pursuant to Sections 4 and 20 of the Plan.

(ff) "Other Extraordinary Event" is defined in Section 19(a) of the Plan.

(gg) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(hh) "Participant" means an Eligible Employee that participates in the Plan.

(ii) "Person" means an individual, entity or group.

(jj) "Plan" means this BrightView Holdings, Inc. 2018 Employee Stock Purchase Plan.

(kk) "Proceeding" is defined in Section 30 of the Plan.

(ll) "Purchase Period" means, unless changed by the Administrator, the approximately twelve (12) month period commencing after one Exercise Date and ending with the next Exercise Date, except that the first Purchase Period of any Offering Period will commence on the Enrollment Date and end with the next Exercise Date.

(mm) "Purchase Price" means an amount equal to ninety percent (90%) of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided, that the Purchase Price may be determined for subsequent Offering Periods by the Administrator subject to compliance with Section 423 of the Code (or any successor rule or provision or any other Applicable Law, regulation or stock exchange rule) or pursuant to Section 20 of the Plan.

(nn) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(oo) "Trading Day" means a day on which the national stock exchange upon which the Common Stock is listed is open for trading.

(pp) "U.S. Treasury Regulations" means the Treasury regulations of the Code. Reference to a specific Treasury Regulation or Section of the Code shall include such Treasury Regulation or Section, any valid regulation.

promulgated under such Section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such Section or regulation.

3. Eligibility.

(a) **First Offering Period.** In order to participate in the first Offering Period, an Eligible Employee must complete a subscription agreement during the applicable Enrollment Window before the first Offering Period begins.

(b) **Subsequent Offering Periods.** Any Eligible Employee must complete a subscription agreement during the prescribed Enrollment Window before any given subsequent Offering Period in order to participate in the Plan, subject to the requirements of Section 5 of the Plan.

(c) **Non-U.S. Employees.** Eligible Employees who are citizens or residents of a non-U.S. jurisdiction (without regard to whether they also are citizens or residents of the United States or resident aliens (within the meaning of Section 7701(b)(1)(A) of the Code)) may be excluded from participation in the Plan or an Offering if the participation of such Eligible Employees is prohibited under the laws of the applicable jurisdiction or if complying with the laws of the applicable jurisdiction

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would cause the Plan or an Offering to violate Section 423 of the Code. In the case of the Non-423 Component, an Eligible Employee may be excluded from participation in the Plan or an Offering if the Administrator has determined that participation of such Eligible Employee is not advisable or practicable.

(d) **Limitations.** Any provisions of the Plan to the contrary notwithstanding, no Eligible Employee will be granted an option under the Plan (i) to the extent that, immediately after the grant, such Eligible Employee (or any other person whose stock would be attributed to such Eligible Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in **section 414(p)(1)(B) Section 423 of the Code**) that meets the requirements of the Company's domestic relations order procedures Company or any Parent or Subsidiary of the Company accrues at a rate that exceeds twenty-five thousand dollars (\$25,000) worth of stock (determined at the Fair Market Value of the stock at the time such option is granted) for each calendar year in which such option is outstanding at any time, as determined in accordance with Section 423 of the Code and the regulations thereunder.

4. Offering Periods.

(a) **Frequency and Duration.** The Administrator may establish Offering Periods of such frequency and duration as it may from time to time determine as appropriate.

(b) **First Offering Period.** The first Offering Period under the Plan shall commence with the first Trading Day on the later of November 15, 2018 and the date following the date on which the stockholders of the Company approve the Plan and shall end on the first Trading Day on or after November 14, 2019.

(c) **Successive Offering Periods.** Unless the Administrator determines otherwise, a new Offering Period shall commence on the first Trading Day following the last Exercise Date of the immediately preceding Offering Period.

(d) **Additional Offering Periods.** At the discretion of the Committee, additional Offering Periods may be conducted under the Plan. Such additional Offering Periods may, but need not, qualify under Section 423 of the

Code. The Administrator shall determine the commencement and duration of each additional Offering Period, and additional Offering Periods may be consecutive or overlapping. The other terms and conditions of each additional Offering Period shall be those set forth in this Plan document, with such changes or additional features as the Administrator determines necessary to comply with Section 423 of the Code (or any successor rule or provision or any other Applicable Law, regulation or stock exchange rule). The Administrator shall have the power to change the duration of Offering Periods (including the commencement dates thereof) with respect to future Offerings without stockholder approval.

(e) **Offering Period Limit.** No Offering Period may last more than twenty-seven (27) months.

(f) **Applicable Offering Period.** For purposes of calculating the Purchase Price, the applicable Offering Period shall be determined as follows:

(A) Once a Participant is enrolled in the Plan for an Offering Period, such Offering Period shall continue to non-qualified plans, apply to him or her until the earliest of (x) the end of such Offering Period, (y) the end of his or her participation under Section 10 of the Plan or (z) re-enrollment for a subsequent Offering Period under Paragraph (B), below.

(B) In the event that the Fair Market Value of a share of Common Stock on the first trading day of the Offering Period for which the Participant is enrolled is higher than on the first trading day of any subsequent Offering Period, the Participant shall automatically be re-enrolled for such subsequent Offering Period.

5. Participation.

(a) First Offering Period. An Eligible Employee will be entitled to participate in the first Offering Period pursuant to Section 3(a) of the Plan only if such payment is made individual submits a subscription agreement authorizing Contributions in a form determined by the Administrator (which may be similar to the form attached hereto as Exhibit A) to the Company's designated plan administrator (i) no earlier than the effective date of the Form S-8 registration statement that registers the offer and sale of Common Stock under this Plan and (ii) no later than ten (10) business days following the effective date of such S-8 registration statement or such other period of time as the Administrator may determine (the "Enrollment Window").

(b) Subsequent Offering Periods. An Eligible Employee may participate in the Plan pursuant to Section 3(b) of the Plan by (i) submitting to the Company's stock administration office (or its designee), on or before a date determined by the Administrator prior to an individual applicable Enrollment Date, a properly completed subscription agreement authorizing Contributions in the form provided by the Administrator for such purpose, or (ii) following an electronic or other than enrollment procedure determined by the Participant Administrator.

6. Contributions.

(a) At the time a Participant enrolls in the Plan pursuant to Section 5 of the Plan, he or she will elect to have Contributions (in the form of payroll deductions or otherwise, to the extent permitted by the Administrator) made on each pay day during the Offering Period in an amount not exceeding fifteen percent (15%) of the Compensation, which he or she receives on each pay day during the Offering Period (for illustrative purposes, should a pay day occur on an Exercise Date, a Participant will have any payroll deductions made on such day applied to his or her account under the then-current Purchase Period or Offering Period). The Administrator, in its sole discretion, may permit all Participants in a specified Offering to contribute amounts to the Plan through payment by cash, check or other means set forth in the subscription agreement prior to each Exercise Date of each Purchase Period. A Participant's subscription agreement will remain in effect for successive Offering Periods unless terminated as provided in Section 10 hereof.

(b) Payment shall in the event Contributions are made in the form of payroll deductions, such payroll deductions for a Participant will commence on the first pay day following the Enrollment Date and will end on the last pay day prior to the Exercise Date of such Offering Period to which such authorization is applicable, unless sooner terminated by the Participant as provided in Section 10 hereof; provided, that for the first Offering Period, payroll deductions will commence on the first pay day on or following the end of the Enrollment Window.

(c) All Contributions made for a Participant will be credited to his or her account under the Plan, and Contributions will be made in whole percentages of Compensation only. A Participant may not make any additional payments into such account.

(d) A Participant may discontinue his or her participation in the Plan as provided in Section 10 of the Plan. Except as may be permitted by the Administrator, as determined in its sole discretion, a Participant may not change the rate of his or her Contributions during an Offering Period.

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(d) hereof, a certificate Participant's Contributions may be decreased to zero percent (0%) at any time during a Purchase Period. Subject to Section 423(b)(8) of the Code and Section 3(d) hereof, Contributions will recommence at the rate originally elected by the Participant effective as of the beginning of the first Purchase Period scheduled to end in the following calendar year, unless terminated by the Participant as provided in Section 1043(b)(2) of the Code. Plan.

(f) Notwithstanding any provisions to the contrary in the Plan, Years, the Administrator may allow Eligible Employees to participate in the Plan via cash contributions instead of payroll deductions if (i) payroll deductions are not permitted under applicable local law, (ii) the Administrator determines that cash contributions are permissible under Section 423 of the Code or (iii) for Participants participating in the Non-423 Component.

(g) At the time the option is exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of (or any other time that a taxable event related to the Plan occurs), the Participant must make adequate provision for the Company's or the Employer's federal, state, local or any other tax liability payable to any authority including taxes imposed by jurisdictions outside of the U.S., national insurance, social security or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock (or any other time that a taxable event related to the Plan occurs). At any time, the Company or the Employer may, but will not be obligated to, withhold from the Participant's compensation the amount necessary for the Company or the Employer to meet applicable withholding obligations, including any withholding required to make available to the Company or the Employer any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Eligible Employee. In addition, the Company or the Employer may, but will not be obligated to, withhold from the proceeds of the sale of Common Stock or any other method of withholding the Company or the Employer deems appropriate to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f).

7. Grant of Option. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period will be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of Common Stock determined by dividing such Eligible Employee's Contributions accumulated prior to January 1, 2008 such Exercise Date and retained in the Eligible Employee's account as of the Exercise Date by the applicable Purchase Price; provided, payment that in no event will an Eligible Employee be permitted to purchase during each Purchase Period more than 2,500 shares of Common Stock and, during each

Offering Period, more than 2,500 shares of Common Stock (subject, in each case, to any adjustment pursuant to Section 19 of the Plan); provided, further, that such purchase will be subject to the limitations set forth in Sections 3(d) and 13 of the Plan. The Eligible Employee may accept the grant of such option (i) with respect to the first Offering Period by submitting a Participant's entire Account properly completed subscription agreement in accordance with the requirements of Section 5 of the Plan on or before the last day of the Enrollment Window, and (ii) with respect to any subsequent Offering Period under the Plan, by electing to participate in the Plan in accordance with the requirements of Section

5 of the Plan. The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of Common Stock that an Eligible Employee may purchase during each Purchase Period of an Offering Period. Exercise of the option will occur as provided in Section 8, unless the Participant has withdrawn pursuant to Section 10 of the Plan. To the extent not otherwise exercised in full, the option will expire on the last day of the Offering Period.

8. Exercise of Option.

(a) Unless a Participant withdraws from the Plan as provided in Section 10 of the Plan, his or her option for the purchase of shares of Common Stock will be exercised automatically on the Exercise Date, and the maximum number of full shares subject to the option will be purchased for such Participant at the applicable Purchase Price with the accumulated Contributions from his or her account. No fractional shares of Common Stock will be purchased; any Contributions accumulated in a Participant's account, which are not sufficient to purchase a full share will be returned to the Participant. Any other funds left over in a Participant's account after the Exercise Date will also be returned to the Participant. During a Participant's lifetime, a Participant's option to purchase shares hereunder is exercisable only by him or her.

(b) If the Administrator determines that, on a given Exercise Date, the number of shares of Common Stock with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Enrollment Date of the applicable Offering Period, or (ii) the number of shares of Common Stock available for sale under the Plan on such Exercise Date, the Administrator may in its sole discretion (x) provide that the Company will make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as will be practicable and as it will determine in its sole discretion to be equitable among all Participants exercising options to purchase Common Stock on such Exercise Date, and continue all Offering Periods then in effect or (y) provide that the Company will make a pro rata allocation of the shares available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as will be practicable and as it will determine

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in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and terminate any or all Offering Periods then in effect pursuant to Section 20 of the Plan. The Company may make a pro rata allocation of the shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date.

(c) Further, with respect to any Offering under the Non-423 Component that is made to Participants of Designated Companies within the European Economic Area (the "EEA"), if a prospectus may be required to be filed in accordance with EU Prospectus Directive No. 2003/71/EC, as currently and hereinafter amended (the "EU Prospectus Directive"), then until such time as a valid prospectus is on file or a prospectus is not required or is no longer required under the EU Prospectus Directive in connection with such Offerings under the Plan, the total Purchase Price payable for the aggregate number of shares of Common Stock offered under this Plan under all Offerings that are not otherwise exempt from the EU Prospectus Directive made to Participants of Designated Companies within the EEA for any twelve (12)-month period shall not exceed EUR 5 million (the "EEA Limit"). If the Administrator determines that, on a given Enrollment Date, the total Purchase Price payable for the number of shares of Common Stock with respect to which options are to be exercised may cause the EEA Limit to be exceeded, the Administrator may in its sole discretion (x) provide that the Company will make a pro rata allocation of the shares of Common Stock available for purchase and under the EEA Limit on such Enrollment Date, as applicable, in as uniform a manner as will be practicable and as it will determine in its sole discretion to be equitable among all Participants of Designated Companies within the EEA exercising options to purchase Common Stock by reference to the Offering Period beginning on that Enrollment Date, and continue all Offering Periods then in effect or (y) provide that the Company will make a pro rata allocation of the shares of Common Stock available for purchase and under the EEA Limit on such Enrollment Date, as applicable, in as uniform a manner as will be

practicable and as it will determine in its sole discretion to be equitable among all Participants of Designated Companies within the EEA exercising options to purchase Common Stock by reference to the Offering Period beginning on that Enrollment Date, and terminate any or all Offering Periods then in effect pursuant to Section 20 of the Plan.

9. Delivery. As soon as reasonably practicable after each Exercise Date on which a purchase of shares of Common Stock occurs, the Company will arrange the delivery to each Participant of the shares purchased upon exercise of his or her option in a form determined by the Administrator (in its sole discretion) and pursuant to rules established by the Administrator. The Company may permit or require that shares be deposited directly with a broker designated by the Company or to a designated agent of the Company, and the Company may utilize electronic or automated methods of share transfer. The Company may require that shares be retained with such broker or agent for a designated period of time and/or may establish other procedures to permit tracking of disqualifying dispositions of such shares. No Participant will have any voting, dividend, or other stockholder rights with respect to shares of Common Stock subject to any option granted under the Plan until such shares have been purchased and delivered to the Participant as provided in this Section 9 of the Plan.

10. Withdrawal.

(a) A Participant may withdraw all but not less than all the Contributions credited to his or her account and not yet used to exercise his or her option under the Plan at any time by (i) submitting to the Company's stock administration office (or its designee) a written notice of withdrawal in the form determined by the Administrator for such purpose (which may be similar to the form attached hereto as Exhibit B), or (ii) following an electronic or other withdrawal procedure determined by the Administrator; provided, that, a Participant may not withdraw during any blackout period applicable to such Participant. All of the Participant's Contributions credited to his or her account will be paid to such Participant promptly after receipt of notice of withdrawal and such Participant's option for the Offering Period will be automatically terminated, and no further Contributions for the purchase of shares will be made for such Offering Period. If a Participant withdraws from an Offering Period, Contributions will not resume at the beginning of the succeeding Offering Period, unless the Participant re-enrolls in the Plan in accordance with the provisions of Section 5 of the Plan.

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(b) A Participant's withdrawal from an Offering Period will not have any effect upon his or her Separation from Service, provided eligibility to participate in any similar plan that (i) may hereafter be adopted by the payment is made on Company or before in succeeding Offering Periods that commence after the later of (A) the December 31 termination of the calendar year in Offering Period from which the Participant's Separation Participant withdraws.

11. Termination of Employment. Upon a Participant's ceasing to be an Eligible Employee, for any reason, he or she will be deemed to have elected to withdraw from Service occurs the Plan and the Contributions credited to such Participant's account during the Offering Period but not yet used to purchase shares of Common Stock under the Plan will be returned to such Participant or, (B) in the date case of his or her death, to the person or persons entitled thereto under Section 15 of the Plan, and such Participant's option will be automatically terminated. Unless determined otherwise by the Administrator in a manner that, with respect to an Offering under the 423 Component, is two permitted by, and one-half (2-1/2) months after compliant with, Section 423 of the Participant's Separation Code, a Participant whose employment transfers between entities through a termination with an immediate rehire (with no break in service) by the Company or a Designated Company shall not be treated as terminated under the Plan; however, no Participant shall be deemed to switch from Service an Offering under the Non-423 Component to an Offering under the 423 Component or vice versa unless (and then only to the extent) such switch would not cause the 423 Component or any Option thereunder to fail to comply with Section 423 of the Code.

12. Interest. No interest will accrue on the Contributions of a participant in the Plan, except as may be required by Applicable Law, as determined by the Company, and (ii) if so required by the laws of a particular jurisdiction, shall, with respect to Offerings under the 423 Component, apply to all Participants in the relevant Offering, except to the

extent otherwise permitted by U.S. Treasury Regulation Section 1.423-2(f).

13. Stock.

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 19 hereof, the maximum number of shares of Common Stock that will be made available for sale under the Plan will be ~~1,100,000~~^{2,100,000} shares of Common Stock.

(b) Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), a Participant will only have the rights of an unsecured creditor with respect to such shares, and no right to vote or receive dividends or any other rights as a stockholder will exist with respect to such shares.

(c) Shares of Common Stock to be delivered to a Participant under the Plan will be registered in the name of the Participant or in the name of the Participant and his or her spouse.

14. Administration. The Plan will be administered by the Board or a Committee appointed by the Board, which Committee will be constituted to comply with Applicable Laws. The Administrator will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to designate separate Offerings under the Plan, to designate Subsidiaries and Affiliates as participating in the 423 Component or Non-423 Component, to determine eligibility, to adjudicate all disputed claims filed under the Plan and to establish such procedures that it deems necessary for the administration of the Plan (including, without limitation, to adopt such procedures and sub-plans as are necessary or appropriate to permit the participation in the Plan by employees who are foreign nationals or employed outside the U.S., the terms of which sub-plans may take precedence over other provisions of this Plan, with the exception of Section 13(a) hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan). Unless otherwise determined by the Administrator, the employees eligible to participate in each sub-plan will participate in a separate Offering and will

be in the Non-423 Component, unless such designation would cause the 423 Component to violate the requirements of Section 423 of the Code. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding eligibility to participate, the definition of Compensation, handling of Contributions, making of Contributions to the Plan (including, without limitation, in forms other than payroll deductions), establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of stock certificates that vary with applicable local requirements. The Administrator also is authorized to determine that, to the extent permitted by U.S.

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Treasury Regulation Section 1.423-2(f), the terms of an option granted under the Plan or an Offering to citizens or residents of a non-U.S. jurisdiction will be less favorable than the terms of options granted under the Plan or the same Offering to employees resident solely in the U.S. Every finding, decision and determination made by the Administrator will, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary.

(a) If permitted by the Administrator, a Participant may file a designation of a beneficiary who is to receive any shares of Common Stock and cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such Participant of such shares and cash. In addition, if permitted by the Administrator, a Participant may file a designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to exercise of the option. If a Participant is married and the designated beneficiary is not greater than \$10,000, the spouse, spousal consent will be required for such designation to be effective.

For Plan Years commencing on and after January 1, 2008, payment

(b) Such designation of a Participant's entire Account beneficiary may be made in a single sum payment changed by the Participant at any time provided that (i) by notice in a form determined by the payment results Administrator. In the event of the death of a Participant and in the termination absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company will deliver such shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations will be in such form and manner as the Administrator may designate from time to time. Notwithstanding Sections 15(a) and (b) above, the Company and/or the Administrator may decide not to permit such designations by Participants in non-U.S. jurisdictions to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f).

16. Transferability. Neither Contributions credited to a Participant's account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15 hereof) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition will be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

17. Use of Funds. The Company may use all Contributions received or held by it under the Plan for any corporate purpose, and the Company will not be obligated to segregate such Contributions except under Offerings or for Participants in the Non-423 Component for which Applicable Laws require that Contributions to the Plan by Participants be segregated from the Company's general corporate funds and/or deposited with an independent third party. Until shares of Common Stock are issued, Participants will only have the rights of an unsecured creditor with respect to such shares.

18. Reports. Individual accounts will be maintained for each Participant in the Plan. Statements of account will be given to participating Eligible Employees at least annually, which statements will set forth the amounts of Contributions, the Purchase Price, the number of shares of Common Stock purchased and the remaining cash balance, if any.

19. Adjustments, Dissolution, Liquidation, Merger or Change in Control.

(a) **Adjustments.** In the event that any subdivision or consolidation of outstanding shares of Common Stock, declaration of a dividend payable in shares of Common Stock or other stock split, other recapitalization or capital reorganization of the Company, any consolidation or merger of the Company with another corporation or entity, the adoption by the Company of any plan of exchange affecting the Common Stock or any distribution to holders of Common Stock of securities or property (other than normal cash dividends or dividends payable in Common Stock), the Administrator, in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made

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available under the Plan, will, in such manner as it may deem equitable, adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan that has not yet been exercised, and the numerical limits of Sections 7 and 13 of the Plan.

(b) **Dissolution or Liquidation.** In the event of the proposed dissolution or liquidation of the Company, any Offering Period then in progress will be shortened by setting a New Exercise Date, and will terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date will be before the date of the Company's proposed dissolution or liquidation. The Administrator will notify each Participant Account in writing or electronically, prior to the New Exercise Date, that the

Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10 hereof.

(c) **Merger or Change in Control.** In the event of a merger or Change in Control, each outstanding option will be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the option, the Offering Period with respect to which such option relates will be shortened by setting a New Exercise Date on which such Offering Period shall end. The New Exercise Date will occur before the date of the Company's proposed merger or Change in Control. The Administrator will notify each Participant in writing or electronically prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10 hereof.

20. Amendment or Termination.

(a) The Board or the Administrator, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. If the Plan is terminated, the Board or the Administrator, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Exercise Date (which may be sooner than originally scheduled, if determined by the Administrator in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 19 hereof). If the Offering Periods are terminated prior to expiration, all amounts then credited to Participants' accounts that have not been used to purchase shares of Common Stock will be returned to the Participants (without interest thereon, except as otherwise required under similar plans Applicable Laws, as further set forth in Section 12 hereof) as soon as administratively practicable.

(b) Without stockholder consent and without limiting Section 20(a) hereof, the Administrator will be entitled to change the Offering Periods or Purchase Periods, designate separate Offerings, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit Contributions in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed Contribution elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with Contribution amounts, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable that are consistent with the Plan.

(c) In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) amending the Plan to conform with the safe harbor definition under the Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto), including with respect to an Offering Period underway at the time;

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(ii) altering the Purchase Price for any Offering Period or Purchase Period including an Offering Period or Purchase Period underway at the time of the change in Purchase Price;

(iii) shortening any Offering Period or Purchase Period by setting a New Exercise Date, including an Offering Period or Purchase Period underway at the time of the Administrator action;

(iv) reducing the maximum percentage of Compensation a Participant may elect to set aside as Contributions; and

(v) reducing the maximum number of shares of Common Stock a Participant may purchase during any Offering Period or Purchase Period.

Such modifications or amendments will not require stockholder approval or the consent of any Plan Participants.

21. **Notices.** All notices or other communications by a Participant to the Company under or in connection with the Plan will be deemed to have been duly given when received in the form and manner specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. **Conditions Upon Issuance of Shares.** Shares of Common Stock will not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto will comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the

Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and will be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

23. Restrictions on Sale. Unless another period is designated by the Administrator in advance of the Enrollment Date of an Offering Period, as discussed below, any shares of Common Stock purchased under the Plan may not be sold, transferred or otherwise disposed of by a Participant (or such Participant's legal representative or estate, as applicable) for twelve (12) months following the applicable Exercise Date (the "Restricted Period"). The Administrator may, in its sole discretion, place additional restrictions on the sale or transfer of shares of Common Stock purchased under the Plan during any Offering Period (including the designation of a new Restricted Period) by notice to all Participants of the nature of such restrictions given in advance of the Enrollment Date of such Offering Period. The additional restrictions may, among other things, change the Restricted Period to a period of up to two years from the Exercise Date, subject to such exceptions as the Administrator may determine (e.g., termination of employment with the Employer). Any certificates issued for shares that are restricted pursuant to this Section 23, shall, in the discretion of the Administrator, contain a legend disclosing the nature and duration of the restriction (including a description of the Restricted Period). Any such restrictions and exceptions determined by the Administrator shall be applicable equally to all shares of Common Stock purchased during the Offering Period for which the restrictions are first applicable. In addition, the Restricted Period and such other restrictions and exceptions applicable to the Common Stock shall remain applicable during, subsequent Offering Periods unless otherwise determined by the Administrator. If the Administrator should change or eliminate any restrictions for a subsequent Offering Period, notice of such action shall be given to all Participants.

24. Code Section 409A. The 423 Component of the Plan is exempt from the application of Code Section 409A and any ambiguities herein will be interpreted to so be exempt from Code Section 409A. In furtherance of the foregoing and notwithstanding any provision in the Plan to the contrary, if the Administrator determines that an option granted under the Plan may be subject to Code Section 409A and applicable regulations determined or that any provision in the Plan would cause an option under the aggregation provisions; and (ii) the payment does not exceed the applicable dollar amount under Plan to be subject to Code Section 402(g)(1)(B), as indexed, for that year.

(d) Payment is permitted to 409A, the extent necessary to satisfy any applicable federal, state and local income tax withholding federal payroll withholding requirements pursuant to provisions of Code section 409A and the regulations thereunder, related to benefits provided in the Plan.

6.5 Payment For Unforeseeable Emergency

A Participant who incurs a severe financial hardship as defined in this subsection (a) and does not have other available resources as described in this subsection (b), Administrator may apply to the Committee for an immediate distribution from his or her Account in an amount necessary to satisfy such financial hardship and the tax liability attributable to such distribution.

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(a) A Participant incurs a severe financial hardship as a result of the following:

- (i) a sudden and unexpected illness or accident involving the Participant or his or her spouse or any dependent (as determined pursuant to Section 152(a) of the Code),
- (ii) a casualty loss involving the Participant's property or
- (iii) other similar extraordinary and unforeseeable event beyond the Participant's control.

(b) Such Participant does not have any other resources available, whether through reimbursement or compensation (by insurance or otherwise), liquidation of existing assets (to the extent such liquidation would not itself result in financial hardship), or cessation of deferrals, to satisfy such financial emergency.

(c) The determination of whether a Participant has incurred a severe financial hardship entitling the Participant to a payment under this Section shall be made by the Committee on a uniform and non-discriminatory basis, and shall be based on appropriate documentation or other evidence required by the Committee.

6.6 Payment of Death Benefits

- (a) Each Participant shall designate a beneficiary on the proper beneficiary form as prescribed by the Committee to receive his or her Accounts in the event of death. If a Participant dies with a balance credited to his or her Accounts, such balance shall be paid to the applicable beneficiary or beneficiaries in a single lump-sum.
- (b) Any distributions pursuant to this Section will occur following the date of death and receipt by the Company of acceptable proof of the Participant's death and approval by the Committee.

(c) Notwithstanding the above, if no beneficiary designation is on file with the Company at the time of death of the Participant or such designation is not effective for any reason then the designated beneficiary to receive such benefits shall be as follows:

- (1) the Participant's surviving spouse; or
- (2) if there is no surviving spouse; then to the Participant's estate.

(d) All decisions made by the Committee in good faith and based upon affidavit or other evidence satisfactory to the Committee regarding questions of fact in the determination of the identity of such beneficiary(ies) shall be conclusive and binding upon all parties, and payment made in accordance therewith shall satisfy all liability hereunder.

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6.7 Disability

As soon as possible following a determination by the Committee of a Disability all plan benefits are immediately payable according to one of the following:

- (a) In the form of a single lump sum; or,
- (b) According to the times and in the forms of distribution originally elected by the Participant each class year.

Should a Participant during an annual election period fail to make an election for time and form of payment pursuant to this section, the benefit distribution will be made in the form of a single lump sum for the applicable class year.

6.8 Valuation of Distributions

The benefit amount of a Participant's Account to be distributed pursuant to this Article VI shall be based on the value of such Accounts on any business day that the New York Stock Exchange is open for trading as soon as practicable after instructions are received in good order by the Committee.

6.9 Timing of Distributions

Distributions made pursuant to this Article VI shall be made at the following times:

- (a) **Specific Date** — A specific date which occurs no earlier than during the second Plan Year following the Plan Year in which the deferrals designated for distribution were made. Any distribution election made in accordance with a specific date shall be made as soon as administratively feasible following the elected specific date, but no later than the end of the calendar year containing the date or, if later, the 15th day of the third calendar month following the specified date.
- (b) **Event** — Any distribution election made in accordance with Separation from Service, Death, Disability or Unforeseeable Emergency shall be made as soon as administratively feasible following the event, but no later than 90 days following the event.

Article VII. TRANSITION ELECTIONS

7.1 Section 409A Restatement

All credits made to Participants' Accounts under amend the terms of the Plan shall and/or of an outstanding option granted under the Plan, or take such other action the Administrator determines is necessary or appropriate, in each case, without the Participant's consent, to exempt any outstanding option or future option that may be made subject granted under the

Plan from or to the provisions of allow any such options to comply with Code Section 409A, applicable regulations thereunder and IRS Notice 2005-1, but only to the extent any such amendments or action by the Administrator would not violate Code Section 409A. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option to purchase Common Stock under the Plan that is intended to be exempt from or compliant with Code Section 409A is not so exempt or compliant or for any action taken by the Administrator with respect thereto. The Company makes no representation that the option to purchase Common Stock under the Plan is compliant with Code Section 409A.

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7.2 Re-Election 25. Term of Time and Form of Payment

(a) Plan. The Plan shall require all active Participants will become effective upon the earlier to re-elect the distribution time and form occur of payment for all credits accumulated through December 31, 2006.

(b) Participants shall complete an election in a manner prescribed its adoption by the Committee or its designee one-time revised distribution elections according approval by the stockholders of the Company. It will continue in effect for a term of ten years, unless sooner terminated under Section 20 of the Plan.

26. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted by the Committee. Such stockholder approval will be obtained in the manner and to the options stated degree required under Sections 6.2 and 6.3 of this Plan. Elections Applicable Laws.

27. Governing Law. The Plan shall be based on governed by, and construed in accordance with, the entire credit balance laws of Participants' aggregated Accounts the State of Delaware (except its choice-of-law provisions).

(c) Participants' transitional Distribution Elections 28. No Right to Employment. Participation in the Plan by a Participant shall become effective on January 1, 2007, not be construed as giving a Participant the right to be retained as an employee of the Company or a Subsidiary or Affiliate, as applicable. Furthermore, the Employer may dismiss a Participant from employment at any time, free from any liability or any claim under the Plan.

7.3 Distributions Scheduled for 2006

Notwithstanding Section 7.2(a) 29. Severability. If any provision of the Plan payments scheduled is or becomes or is deemed to be made invalid, illegal, or unenforceable for any reason in any jurisdiction or as to commence in 2006 must be made according to any Participant, such invalidity, illegality or unenforceability shall not affect the original election on file.

7.4 Participant Accounts in Payment Status

Notwithstanding Section 7.2(a) remaining parts of the Plan, Participant Accounts in payment status on December 31, 2006 shall continue to be governed by the Participant's original election on file.

7.5 Credits made in 2006

Pursuant to Section 6.2, and notwithstanding Section 7.2 of the Plan no credits made shall be construed and enforced as to such jurisdiction or Participant Accounts during 2006 may be paid earlier than January 1, 2008.

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ATTACHMENT B

Re: SUPERSEDING PROVISIONS as if the invalid, illegal or unenforceable provision had not been included.
for

Plan Name: 30. Compliance with Applicable Laws. The Brickman Group, Ltd. LLC Executive Savings Plan (the "Plan")

(a) Superseding Provision(s) — The following provisions supersede other provision terms of this Adoption Agreement and/Plan are intended to comply with all Applicable Laws and will be construed accordingly.

31. Jurisdiction; Waiver of Jury Trial. Any suit, action or the Basic Plan Document as described below:

1.04(a) — is modified to read as "Compensation shall be defined, proceeding with respect to Employees, the Plan, or any judgment entered by any court of competent jurisdiction in The Brickman Group Ltd. LLC Employee Retirement Investment Plan maintained by the Employer but respect of any thereof, shall also include the Discretionary Bonus".

1.05(a)(2) — the second sentence is modified to read as "The Employer requires Participants to enter into a special salary reduction agreement to make Deferral Contributions with respect to one or more Bonuses, subject to minimum and maximum deferral limitations, as provided be resolved only in the table below, and in accordance with, and subject to, Section 4.01".

2.01(a) "Qualified Plan" means The Brickman Group, Ltd. LLC Employee Retirement Investment Plan, as amended from time to time.

2.01(a) "Discretionary Bonus" means the purely discretionary Bonus based on the Employer's business operations.

4.01 Deferral Contributions, — the second sentence courts of the first paragraph is modified to read as "The Employer State of Delaware and the appellate courts having jurisdiction of appeals in such courts. In that context, and without limiting the generality of the foregoing, the Company and each Participant shall credit an amount irrevocably and unconditionally (a) submit in any proceeding relating to the Participant's account equal Plan or any option, or for the recognition and enforcement of any judgment in respect thereof (a "Proceeding"), to the amount exclusive jurisdiction of such reduction, less the amount courts of employee pretax contributions made by the Participant to State of Delaware, the Qualified Plan court of the United States of America for the applicable payroll period".

4.01 Deferral Contributions - the following sentence is added at the end District of Delaware, and appellate courts having jurisdiction of appeals from any of the section "Participants will be 100% vested in Deferral Contributions credited to their Account at all times".

4.02 Matching Contributions — the following is added to the section "Participants who also participate in the Qualified Plan will be permitted to defer only 1% of their compensation (as defined and limited in the Qualified Plan) under the Qualified Plan. A Matching Contribution shall be credited to the Account of each Participant who makes Deferral Contributions of base salary under this Plan in an amount equal to (a) the matching contribution formula in the Qualified Plan applied to compensation (as defined and limited in the Qualified Plan) deferred by the Participant under the Qualified Plan and this Plan in the relevant pay period less (b) the matching contribution the Participant received under the Qualified Plan in the relevant pay period. Participants will be 100% vested in the Matching Contributions credited to their Account at all times".

11.02 Claims and Review Procedures — the second paragraph of 11.02(a) and the second paragraph of 11.02(b) are deleted.

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Exhibit 10.5

December 6, 2022

Fidelity Investments

245 Summer Street, V7B

Boston, MA 02210

WI Strategy and Planning, Contracts

Dear Fidelity:

This letter relates to the Service Agreement for The BrightView Executive Savings Plan entered into between BrightView Landscapes, LLC ("Employer") and Fidelity Management Trust Company ("Fidelity") (the "Agreement"). The parties intend foregoing, and agree that this letter all claims in respect of any such Proceeding shall constitute an amendment be heard and determined in such Delaware State court or, to the Agreement.

WHEREAS extent permitted by law, in such federal court, (b) consent that any such Proceeding may and shall be brought in such courts and waives any objection that the Company and each Participant may now or thereafter have to the venue or jurisdiction of any such Proceeding in any such court or that such Proceeding was brought in an inconvenient court and agree not to plead or claim the same, (c) waive all right to trial by jury in any Proceeding (whether based on contract, tort or otherwise) arising out of or relating to the Plan or any option, (d) agree that service of process in any such Proceeding may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party, in the Employer has informed Fidelity that effective January 1, 2017 case of a Participant, at the name "The Brickman

Group, Ltd. LLC" as Participant's address shown in the Employer has changed to "BrightView Landscapes, LLC", books and all references thereto should be changed accordingly;

WHEREAS, the Employer has informed Fidelity that effective **January 1, 2017** the name records of the Plan has changed from "The Brickman Group, Ltd. LLC Executive Savings Plan" to "The BrightView Executive Savings Plan", Company or, in the case of the Company, at the Company's principal offices, attention General Counsel, and all references thereto should be changed accordingly; and

The parties now desire to amend said Agreement as follows:

1. **Effective January 1, 2017**, replacing all references to "The Brickman Group, Ltd. LLC" as the Employer with "BrightView Landscapes, LLC".
2. **Effective January 1, 2017**, replacing all references to "The Brickman Group, Ltd. LLC Executive Savings Plan" as (e) agree that nothing in the Plan with "The BrightView Executive Savings Plan".
3. **Effective October 1, 2022**, amending subsection B. Administrative Services shall affect the right to effect service of Article I. Basic Services And Fees, to add process in any other manner permitted by the following:

Additional Special Fee	\$3,300 annual fee (this fee is prorated and charged quarterly, deducted per capita from participants with a balance at the end of the quarter)
------------------------	---

Plan# 44418 1 Confidential Information

Exhibit 10.5

By signing below, the undersigned represent that they are authorized to execute this document on behalf of the respective parties. Notwithstanding any contradictory provision State of any Agreement, each party may rely without duty of inquiry on the foregoing representation.

BrightView Landscapes, LLC

By: /s/ Katherine Carty, Delaware.

(Signature of Authorized Individual)

Name: Katherine Carty

Title: VP, Comp & Benefits

Date: 12/13/2022

A copy of this letter will be returned to Employer after it has been countersigned by Fidelity.

Agreed to and accepted by:

Fidelity Management Trust Company

By: /s/Jayant Kacholiya

(Signature of Fidelity Authorized Individual)

Name: Jayant Kacholiya

Title: SVP/Workplace Services Relationship Management

Date: 12/13/2022

Plan# 44418 2 Confidential Information

Exhibit 31.1

CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF

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REFINITIV 

THE SARBANES-OXLEY ACT OF 2002

I, Dale A. Asplund, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended **December 31, 2023** **March 31, 2024** of BrightView 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: **January 31, 2024** **May 1, 2024**

/s/ Dale A. Asplund
Dale A. Asplund
Chief Executive Officer and Director
(Principal Executive Officer)

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Brett Urban, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended **December 31, 2023** **March 31, 2024** of BrightView 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: **January 31, 2024** May 1, 2024

/s/ Brett Urban

Brett Urban

Executive Vice President, Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO SECTION 906

OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of BrightView Holdings, Inc. (the "Company") on Form 10-Q for the quarterly period ended **December 31, 2023** **March 31, 2024** filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Dale A. Asplund, Chief Executive Officer and Director of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: **January 31, 2024** May 1, 2024

/s/ Dale A. Asplund

Dale A. Asplund

Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

**AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of BrightView Holdings, Inc. (the "Company") on Form 10-Q for the quarterly period ended **December 31, 2023** **March 31, 2024** filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brett Urban, Executive Vice President, Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: **January 31, 2024** **May 1, 2024**

/s/ Brett Urban
Brett Urban
Executive Vice President, Chief Financial Officer
(Principal Financial Officer)

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