As filed with the Securities and Exchange Commission on June 29, 2021

Registration No. 333-257443

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1
to
FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Xponential Fitness, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**7991**	**84-4395129**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

17877 Von Karman Ave, Suite 100
Irvine, CA, 92614
(949) 346-3000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Anthony Geisler
Chief Executive Officer
Xponential Fitness, Inc.
17877 Von Karman Ave, Suite 100
Irvine, CA, 92614
(949) 346-3000

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies to:

Alan F. Denenberg	**Ian D. Schuman**
Stephen Salmon	**Stelios G. Saffos**
Jason Bassetti	**Scott W. Westhoff**
Davis Polk & Wardwell LLP	**Latham & Watkins LLP**
1600 El Camino Real	**885 Third Avenue**
Menlo Park, California	**New York, New York 10022**
(650) 752-2000	**(212) 906-1200**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 7(a)(2)(B) of the Securities Act. ☐

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 1 (“Amendment No. 1”) to the Registration Statement on FormS-1 (“Registration Statement”) is being filed solely for the purpose of filing certain exhibits as indicated in Part II of this Amendment No. 1. This Amendment No. 1 does not modify any provision of the prospectus that forms a part of the Registration Statement and accordingly, such prospectus has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Unless otherwise indicated, all references to "Xponential Fitness" the "company," "we," "our," "us" or similar terms refer to Xponential Fitness, Inc. and its subsidiaries.

Item 13. Other Expenses of Issuance and Distribution

	Amount to Be Paid
Securities and Exchange Commission registration fee	$ 10,910
Financial Industry Regulatory Authority, Inc. filing fee	15,500
Exchange listing fee	*
Transfer agent's fees	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue Sky fees and expenses	*
Miscellaneous	*
Total	$

* To be completed by amendment.

Each of the amounts set forth above, other than the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc. filing fee and the exchange listing fee, is an estimate.

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law, or DGCL, provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent to the Registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise. The Registrant's bylaws provide for indemnification by the Registrant of its directors, officers and employees to the fullest extent permitted by the DGCL. The Registrant has entered into indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's certificate of incorporation and bylaws and to provide additional procedural protections. There is no pending litigation or proceeding involving a director or executive officer of the Registrant for which indemnification is sought.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock purchases, redemptions or other distributions or (iv) for any transaction from which the director derived an improper personal benefit. The Registrant's certificate of incorporation provides for such limitation of liability.

The Registrant maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (b) to the Registrant with respect to payments which may be made by the Registrant to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The proposed form of underwriting agreement filed as Exhibit 1.1 to this registration statement provides for indemnification of directors and officers of the Registrant by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities

On January 23, 2020, the Registrant issued 1,000 shares of its Class A common stock to H&W Franchise Holdings LLC for $1.00. The issuance of such shares of Class A common stock was not registered under the Securities Act of 1933, as amended, or the Securities Act, because the shares were offered and sold in a transaction exempt from registration under Section 4(a)(2) of the Securities Act.

The following sets forth information regarding securities sold or issued by the predecessors to the Registrant in the three years preceding the date of this registration statement. No underwriters were involved in these sales. There was no general solicitation of investors or advertising, and we did not pay or give, directly or indirectly, any commission or other remuneration, in connection with the offering of these shares. In each of the transactions described below, the recipients of the securities represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the securities issued in these transactions.

LLC Unit Issuances

(1) On March 22, 2018, H&W Franchise Holdings LLC issued 3,798.9 Class A-1 units to one entity as consideration for its interests in certain assets utilized by certain fitness studios using the "AKT in Motion" and "AKT On Demand" trade names.

(2) On July 31, 2018, H&W Franchise Holdings LLC issued 5,716.9 Class A-1 units to one entity as consideration for its interests in certain assets relating to the operation of fitness studios operating under the "Yoga Six" trade name.

(3) On October 25, 2018, H&W Franchise Holdings LLC issued 159,306.1 Class A-3 units to one entity as consideration for its interests in Barre Holdco, LLC.

(4) On February 12, 2020, H&W Franchise Holdings LLC issued 5,000,000 of its Class A-4 Units to one entity at a purchase price of $10 per unit for an aggregate purchase price of $50 million.

(5) On August 31, 2020, H&W Franchise Holdings LLC issued 31,896.58 of its Class A-5 Units to three entities at a purchase price of $470.27 per unit for an aggregate purchase price of $15 million.

The offers, sales and issuances of the securities described in (1) through (8) above were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Rule 506 thereunder as transactions by an issuer not involving any public offering. The recipients in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof.

Profits Interest Plan Grants

(6) On February 27, 2018, H&W Franchise Holdings LLC granted an aggregate of 1,215.0 Class B units to one employee pursuant to its Profits Interest Plan.

(7) On October 24, 2018, H&W Franchise Holdings LLC granted an aggregate of 85,173.3 Class B units to nine employees pursuant to its Profits Interest Plan.

(8) On October 25, 2018, H&W Franchise Holdings LLC granted an aggregate of 25,515.0 Class B units to two employees pursuant to its Profits Interest Plan.

(9) On May 30, 2019, H&W Franchise Holdings LLC granted 1,215.0 Class B units to one board member pursuant to its Profits Interest Plan.

(10) On October 1, 2019, H&W Franchise Holdings LLC granted 25,500 Class B units to three employees pursuant to its Profits Interest Plan.

(11) On May 14, 2019, H&W Franchise Holdings LLC granted 1215.1 Class B units to one employee pursuant to its Profits Interest Plan.

The offers, sales and issuances of the securities described in (6) through (11) above were deemed to be exempt from registration either under Rule 701 promulgated under the Securities Act as transactions under compensatory benefit plans and contracts relating to compensation, or under Section 4(a)(2) transactions between an issuer and members of its senior executive management that did not involve any public offering within the meaning of Section 4(a)(2) of the Securities Act. The recipients of such securities were our employees, directors, or consultants and received the securities under the Registrant's Profits Interest Plan. Appropriate legends were affixed to the securities issued in these transactions.

Item 16. Exhibits and Financial Statement Schedules

(a) The following exhibits are filed as part of this registration statement:

Exhibit Number	Description
1*	Form of Underwriting Agreement
2^#	Contribution Agreement dated as of March 24, 2021 among Rumble Parent LLC, Rumble Fitness, LLC and H&W Franchise Holdings, LLC
3.1#	Certificate of Incorporation of Xponential Fitness, Inc., as currently in effect
3.2#	Form of Amended and Restated Certificate of Incorporation of Xponential Fitness, Inc., to be in effect upon the pricing of this offering
3.3#	Bylaws of Xponential Fitness, Inc., as currently in effect
3.4#	Form of Amended and Restated Bylaws of Xponential Fitness, Inc., to be in effect upon the pricing of this offering
3.5	Form of Certificate of Designations of 6.50% Series A Convertible Preferred Stock
3.6	Form of Certificate of Designations of 6.50% Series A -1 Convertible Preferred Stock
4.1#	Form of Class A Common Stock Certificate
5.1*	Opinion of Davis Polk & Wardwell LLP
10.1#	Lease for facilities at 17877 Von Karman, Irvine, California dated as of November 16, 2017 and amended on December 13, 2018
10.2#	Second Amended Monroe Credit Agreement dated as of October 25, 2018 among Xponential Fitness LLC and St. Gregory Holdco, as Borrowers, the other loan parties thereto and the lenders party thereto

Exhibit Number	Description
10.3#	Second Amendment and Waiver to Second Amended and Restated Credit Agreement dated as of December 20, 2019
10.4#	Third Amendment to Second Amended and Restated Credit Agreement dated as of February 12, 2020
10.5#	Financing Agreement dated as of February 28, 2020 among Xponential Intermediate Holdings, LLC, Xponential Fitness LLC, the listed Guarantors, the lenders party thereto and Cerberus Business Finance Agency, LLC
10.6#	First Amendment to Financing Agreement dated as of August 4, 2020 among Xponential Intermediate Holdings, LLC, Xponential Fitness LLC, the listed Guarantors, the lenders party thereto and Cerberus Business Finance Agency, LLC
10.7#	Second Amendment to Financing Agreement dated as of March 24, 2021 among Xponential Intermediate Holdings, LLC, Xponential Fitness LLC, the listed Guarantors, the lenders party thereto and Cerberus Business Finance Agency, LLC
10.8#	Financing Agreement dated as of April 19, 2021 by and among Xponential Intermediate Holdings, LLC., as Parent, Xponential Fitness LLC and each other subsidiary of Parent listed, as Borrowers, Parent and each other subsidiary of Parent listed as a Guarantor, as Guarantors, the lenders party hereto, as Lenders, and Wilmington Trust, National Association, as Collateral Agent and Administrative agent
10.9+#	Management Services Agreement dated as of September 29, 2017 between H&W Franchise Holdings and TPG Growth III Management, LLC
10.10+#	Assignment, Assumption, Waiver and Release Agreement dated as of June 28, 2018 among TPG Growth III Management, LLC, H&W Franchise Holdings LLC and H&W Investco, L.P.
10.11+#	Consulting Agreement dated as of June 30, 2018 between H&W Investco Management, LLC and Anthony Geisler
10.12	Form of Second Amended and Restated Limited Liability Company Operating Agreement of Xponential Intermediate Holdings LLC
10.13	Form of Tax Receivable Agreement with the Continuing Pre-IPO LLC Members and the Rumble Shareholder
10.14*	Form of Reorganization Agreement
10.15#	Form of Registration Rights Agreement
10.16#	Form of Xponential Fitness, Inc. Omnibus Incentive Plan
10.17#	Form of Xponential Fitness, Inc. Employee Stock Purchase Plan
10.18*+	Employment Agreement with Anthony Geisler dated as of , 2021
10.19+#	Employment Agreement with John Meloun dated as of June 17, 2021
10.20+#	Employment Agreement with Megan Moen dated as of June 17, 2021
10.21+#	Employment Agreement with Ryan Junk dated as of June 17, 2021
10.22+#	Employment Agreement with Sarah Luna dated as of June 21, 2021
10.23+#	First Amended and Restated Profits Interest Plan of H&W Franchise Holdings, LLC dated as of June 27, 2018

Exhibit Number	Description
10.24+#	Club Pilates Franchise, LLC First Amended and Restated Phantom Equity Plan
10.25+#	CycleBar Holdco, LLC First Amended and Restated Phantom Equity Plan
10.26#	Form of Director and Executive Officer Indemnification Agreement
10.27	Securities Purchase Agreement, by and among the Purchasers Listed on Exhibit A and H&W Franchise Holdings LLC, dated as of June 25, 2021
21.1#	Subsidiaries of the Registrant
23.1#	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for Xponential Fitness, Inc.
23.2#	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for Xponential Fitness LLC
23.3*	Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1)
23.4#	Consent of Frost & Sullivan
23.5#	Consent of Buxton Company
24.1#	Power of Attorney

* To be filed by amendment.
\# Previously filed.
\+ Indicates management contract or compensatory plan.
^ Portions of the exhibit have been omitted as the Registrant has determined that: (i) the omitted information is not material; and (ii) the omitted information would likely cause competitive harm to the Registrant if publicly disclosed.

(b) The following financial statement schedule is filed as part of this registration statement:

Item 17. Undertakings

The undersigned registrant hereby undertakes:

(a) The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this registration statement, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) For the purpose of determining liability under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of CA, on the 29th day of June, 2021.

Xponential Fitness, Inc.

By: /s/ Anthony Geisler
Name: Anthony Geisler
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Anthony Geisler Anthony Geisler	Chief Executive Officer (principal executive officer)	June 29, 2021
/s/ John Meloun John Meloun	Chief Financial Officer (principal financial officer and principal accounting officer)	June 29, 2021
* Mark Grabowski	Director	June 29, 2021
* Brenda Morris	Director	June 29, 2021

*By: /s/ John Meloun
John Meloun
Attorney-in-fact

Exhibit 3.5

CERTIFICATE OF DESIGNATIONS
OF
6.50% SERIES A CONVERTIBLE PREFERRED STOCK
OF
XPONENTIAL FITNESS, INC.

Xponential Fitness, Inc., a Delaware corporation (the "Company"), hereby certifies that, pursuant to the provisions of Sections 103, 141 and 151 of the General Corporation Law of the State of Delaware, (a) on [ ], 2021, the board of directors of the Company (the "Board of Directors"), pursuant to authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the Company (as such may be amended, modified or restated from time to time, in each case to the extent not prohibited by Section 6(b) of this Certificate of Designations, the "Charter"), adopted the resolution set forth immediately below, which resolution is now, and at all times since its date of adoption has been, in full force and effect:

RESOLVED, that pursuant to the express authorization provided to the Board of Directors to provide, out of the unissued shares of preferred stock, for one or more series of preferred stock and, with respect to each such series, to fix, without further stockholder approval, the designation, powers, preferences and relative, participating, optional or other special rights, including voting powers and rights, and the qualifications, limitations or restrictions thereof, a series of preferred stock be, and hereby is, created and designated 6.50% Series A Convertible Preferred Stock, and that the designation and number of shares of such series, and the voting powers, designations, preferences and rights, and qualifications, limitations or restrictions thereof, are as set forth in this certificate of designations, as it may be amended, modified or restated from time to time (the "Certificate of Designations") as follows:

Section 1 Designation and Number of Shares. Pursuant to the Charter, there is hereby created out of the authorized and unissued shares of preferred stock of the Company, par value $0.0001 per share ("Preferred Stock"), a series of Preferred Stock initially consisting of [ ] shares of Preferred Stock designated as the "6.50% Series A Convertible Preferred Stock" (the "Series A Convertible Preferred Stock"). Such number of shares may be increased or decreased by resolution of the Board of Directors or any duly authorized committee thereof, subject to the terms and conditions hereof and the requirements of applicable law; provided that (i) no increase shall cause the number of authorized shares of Series A Convertible Preferred Stock to exceed the total number of authorized shares of Preferred Stock and (ii) no decrease shall reduce the number of shares of Series A Convertible Preferred Stock to a number less than the number of such shares then outstanding.

Section 2 General Matters; Ranking. Each share of Series A Convertible Preferred Stock shall be identical in all respects to every other share of Series A Convertible Preferred Stock. The Series A Convertible Preferred Stock, with respect to distributions, including upon the redemption, liquidation, winding-up or dissolution, as applicable, of the Company, shall rank (i) senior to each class or series of Junior Securities, (ii) on parity with each class or series of Parity Securities (if any), (iii) junior to each class or series of Senior Securities (if any) and (iv) junior to the Company's existing and future indebtedness and other liabilities.

Section 3 Definitions. As used herein with respect to the Series A Convertible Preferred Stock:

(a) "Affiliate" means, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls (alone or through an affiliated group), is controlled by, or is under common control with, such specified Person, including any investment vehicle under common management of such Person, (b) any Person that is an officer, director, manager, member, partner, or trustee of, or serves in a similar capacity with respect to, such specified Person (or an Affiliate of such Person) or of which such specified Person is an officer, director, member, manager, partner or trustee, or with respect to which such Person serves in a similar capacity or (c) any Person who is a Family Member of such specified Person; provided that the holders of the Series A Convertible Preferred Stock as of the Initial Issue Date will not be Affiliates of the Company.

(b) "Applicable Premium" means (i) with respect to a redemption or liquidation occurring on or prior to the fifth anniversary of the Initial Issue Date, the sum of (1) all required and unpaid Preferential Coupons due on the Series A Convertible Preferred Stock payable at the Preferential Coupon Rate from the applicable date of redemption through the date that is five (5) years after the Initial Issue Date plus (2) 5.0% of the Fixed Liquidation Preference of the Series A Convertible Preferred Stock being so redeemed and (ii) with respect to a redemption or liquidation occurring after the fifth anniversary of the Initial Issue Date, but on or prior to the sixth anniversary of the Initial Issue Date, 5.0% of the Fixed Liquidation Preference.

(c) "Average VWAP" per share over a certain period means the arithmetic average of the VWAP per share for each Trading Day in the relevant period.

(d) "Business Day" means any day other than a Saturday, Sunday or other day that banks are not authorized to be open for business in the State of California.

(e) "Class A Common Stock" means the Class A Common Stock of the Company, par value $0.0001 per share.

(f) "Class B Common Stock" means the Class B Common Stock of the Company, par value $0.0001 per share.

(g) "Common Stock" means, collectively, the Class A Common Stock and the Class B Common Stock.

(h) "Conversion Rate" per share of Series A Convertible Preferred Stock means [ ] shares of Class A Common Stock, which amount is subject to adjustment as set forth herein. Whenever this Certificate of Designations refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference shall be deemed to be the Conversion Rate as of the close of business on such date.

(i) "Conversion Price" means, at any time, for each share of Series A Convertible Preferred Stock, a dollar amount equal to $1,000 *divided by* the then-applicable Conversion Rate, which, for the avoidance of doubt, shall initially be $[ ].

(j) "Convertible Securities" means any security convertible into or exchangeable for Class A Common Stock.

(k) "Coupon Payment Date" means March 31, June 30, September 30 and December 31 of each year, commencing on [September 30, 2021].

(l) "Coupon Period" means the period from, and including, a Coupon Payment Date to, but excluding, the next Coupon Payment Date, except that the initial Coupon Period shall commence on, and include, the Initial Issue Date and shall end on, and exclude, the first Coupon Payment Date.

(m) "Effective Price" has the following meaning with respect to the issuance or sale of any shares of Class A Common Stock or any Equity-Linked Securities:

A. in the case of the issuance or sale of shares of Class A Common Stock, the value of the consideration received by the Company for such shares, expressed as an amount per share of Class A Common Stock; and

B. in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose (1) numerator is equal to the sum, without duplication, of (x) the value of the aggregate consideration received by the Company for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Class A Common Stock pursuant to such Equity-Linked Securities; and (2) denominator is equal to the maximum number of shares of Class A Common Stock underlying such Equity-Linked Securities;

provided, *however*, that:

(x) for purposes of clause (B) above, if such minimum aggregate consideration, or such maximum number of shares of Class A Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (1) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Class A Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (2) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (including pursuant to "anti-dilution" or similar provisions), there will be deemed to occur, for purposes of Section 11(g) and without affecting any prior adjustments theretofore made to the Conversion Rate, an issuance of additional Equity-Linked Securities;

(y) for purposes of clause (B) above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Class A Common Stock pursuant to such Equity-Linked Securities; and

(z) the "value" of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

(n) "Effective Date" means, in the case of Class A Common Stock, the first date on which the shares of Class A Common Stock trade on the Relevant Stock Exchange, regular way, reflecting the relevant share split or share combination, as applicable.

(o) "Equity-Linked Securities" means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Class A Common Stock.

(p) "Ex-Date" means the first date on which the shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(q) "Family Member" means, with respect to any Person, such Person's spouse or lineal descendants (whether natural or adopted).

(r) "Fixed Liquidation Preference" means, as to shares of Series A Convertible Preferred Stock, initially $1,000 per share, subject to adjustment as set forth in Section 4, including, for the avoidance of doubt, any PIK Coupons.

(s) "Holder Majority" means, holders of record of a majority of the outstanding shares of Preferred Stock, voting together as a single class, provided that such majority must include the MSD Investor so long as the MSD Investor or its Permitted Transferees holds, collectively, not less than 50% of the number of shares of Series A-1 Convertible Preferred Stock or Series A Convertible Preferred Stock issued to it on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10).

(t) "Indebtedness" shall have the meaning given to it under the Financing Agreement as in effect on the date hereof.

(u) "Initial Holder" means, as to a share of Preferred Stock, the Person to which such share was issued and sold pursuant to the Securities Purchase Agreement.

(v) "Initial Issue Date" means the first original issue date of either shares of the Series A Convertible Preferred Stock or shares of the Series A-1 Convertible Preferred Stock.

(w) "Junior Securities" means (i) the Common Stock and (ii) each other class or series of capital stock of the Company established after the Initial Issue Date, the terms of which do not expressly provide that such class or series ranks (x) senior to the Series A Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, winding-up or dissolution or (y) on parity with the Series A Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, winding-up or dissolution.

(x) "Last Reported Sale Price" for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Class A Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Class A Common Stock is then listed. If the Class A Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Class A Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Class A Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Class A Common Stock on such Trading Day from each of at least three (3) nationally recognized independent investment banking firms selected by the Company.

(y) "Liquidity Conditions" will be satisfied with respect to a Mandatory Conversion if (A) either (1) each share of Class A Common Stock to be issued upon such Mandatory Conversion of any Series A Convertible Preferred Stock would be eligible to be offered, sold or otherwise transferred by the holder of such Series A Convertible Preferred Stock pursuant to Rule 144 under the Securities Act of 1933, as amended (the "Securities Act") (or any successor rule thereto), without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice; or (2) the offer and sale of such share of Class A Common Stock by such holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable, by such holder to sell such share of Class A Common Stock, continuously during the period from, and including, the date the related Mandatory Conversion Notice is sent to, and including, the forty fifth (45th) Trading Day after the date such share of Class A Common Stock is issued; and (ii) the offer, sale or other transfer of such share of Class A Common Stock by such holder would not be subject to any registration or notice requirement under any U.S. State securities or "blue sky" laws (other than those that have been fully satisfied or complied with); (B) each share of Class A Common Stock referred to in clause (A) above (i) will, when issued or sold pursuant to the effective registration statement referred to above, be admitted for book-entry settlement through The Depository Trust Company; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on a nationally recognized stock exchange; and (C) the average public float for the Class A Common Stock over the most recent 30 consecutive Trading Day period exceeds $400.0 million and the average daily trading volume for the Class A Common Stock for 20 Trading Days in a 30 consecutive Trading Day period ending on the date of such mandatory conversion exceeds $8.0 million per day, in each case as displayed by Bloomberg (or its equivalent successor).

(z) "LLC Agreement" means the Limited Liability Company Operating Agreement of the Operating LLC, dated as of [ ], 2021.

(aa) "LLC Units" means the common limited liability interest of the Operating LLC.

(bb) "Market Disruption Event" means (i) a failure by the Relevant Stock Exchange to open for trading during its regular trading session; or (ii) the occurrence or existence, prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Class A Common Stock, for more than a one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Relevant Stock Exchange or otherwise) in the Class A Common Stock.

(cc) "MSD Investor" means any holders of the Series A Convertible Preferred Stock that are Affiliates of MSD Partners, L.P. or MSD Capital, L.P.

(dd) "New Securities" means all Class A Common Stock, Convertible Securities, and Equity-Linked Securities, other than: (A) issuances pursuant to Section 11(j); (B) shares of any class of capital stock of the Company issued on a pro rata basis to all holders of such class as a stock dividend or upon any stock split or other subdivision of shares of capital stock; (C) shares of capital stock of the Company issued as consideration in connection with an acquisition by the Company, approved by the Board of Directors, of assets or capital stock of any Person; (D) shares of Class A Common Stock, Convertible Securities and Options issued to officers, directors, employees or consultants of the Company pursuant to any equity incentive plan adopted or approved by the Board of Directors from time to time, including any shares of Class A Common Stock issuable upon exercise of any such Option or settlement or vesting of any award issued under such plans, (E) rights issued pursuant to a shareholder rights plan, (F) the Company's issuance of securities pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by a majority of the disinterested members of the Board of Directors and (G) issuances of securities by the Company in an underwritten public offering under the Securities Act or pursuant to a customary marketed Rule 144A offering under the Securities Act (or any successor rule thereto), including any related capped call, call spread or similar derivative security issued in connection therewith.

(ee) "Operating LLC" means Xponential Intermediate Holdings LLC.

(ff) "Options" means any options, warrants or other rights to subscribe for or to purchase, or any options for the purchase of, any Class A Common Stock or Convertible Securities.

(gg) "Ownership Threshold" means (i) the Initial Holders beneficially own (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 50% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to such holder on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10); and (ii) (x) with respect to Section 6(b)(viii), the MSD Investor beneficially owns (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 50% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to the MSD Investor on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10), or (y) with respect to Section 6(b)(v), MSD Investor beneficially owns (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 20% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to the MSD Investor on the Initial Issue Date, as applicable; provided that Transfers of any shares of Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock during the occurrence and continuance of an Event of Default shall be disregarded for purposes of calculating the Ownership Threshold.

(hh) "Parity Securities" means any class or series of capital stock of the Company established after the Initial Issue Date, the terms of which expressly provide that such class or series shall rank on parity with the Series A Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, redemption, winding-up or dissolution.

(ii) "Permitted Party" means any Person that is an Affiliate of Mark Grabowski or Anthony Geisler.

(jj) "Permitted Transfer" means any one of the following (i) any Transfer by a holder of Preferred Stock of all or any part of his, her or its shares of Preferred Stock as a gift into trust established by said holder (or an Affiliate thereof) for the benefit of himself, herself and/or a Family Member of such holder (or an Affiliate thereof) and from which such shares, pursuant to the express terms of the governing instrument of such trust, cannot be distributed other than to said holder or an Affiliate thereof during said holder's (or its Affiliate's) lifetime and such holder (or an Affiliate thereof) retains voting control of said shares during said holder's (or its Affiliate's) lifetime; (ii) upon termination of a trust, custodianship, guardianship or similar arrangement, the beneficiary of which is either a holder or a Family Member, a Transfer by the trustee, custodian, guardian or other fiduciary to the Person or Persons who, in accordance with the provisions of said trust, custodianship, guardianship or similar arrangement, are entitled to receive the shares held therein; (iii) with respect to a holder that is a corporation, partnership or limited liability company, a Transfer of all or a portion of such holder's shares to the members of such corporation, partners of such partnership or the members of such limited liability company in connection with the liquidation or dissolution of such corporation, partnership or limited liability company; or (iv) Transfers between Persons meeting the definition of the MSD Investor, Transfers to an Affiliate, or Transfers of interests in any of the foregoing.

(kk) "Permitted Transferee" means a transferee of any security of the Company in a Permitted Transfer.

(ll) "Person" means any individual, sole proprietorship, general partnership, limited partnership, corporation, business trust, trust, joint venture, limited liability company, association, joint stock company, bank, unincorporated organization or any other form of entity.

(mm) "PIK Rate" means the Preferential Coupon Rate plus 1.00%.

(nn) "Preferential Coupon Rate" shall mean a rate per annum of 6.50% of the Fixed Liquidation Preference per share of Series A Convertible Preferred Stock.

(oo) "Proportionate Portion" means the portion of the New Securities available for purchase by a holder of Series A Convertible Preferred Stock, which shall be determined by (a) multiplying the total New Securities available for purchase by (b) a fraction, the numerator of which is the sum of the number of shares of Class A Common Stock underlying the Series A Convertible Preferred Stock held by such holders, and the denominator of which is the sum of: (i) the total number of shares of Class A Common Stock outstanding, (ii) the number of shares of Class A Common Stock issuable upon exchange of then outstanding LLC Units and (iii) the number of shares of Class A Common Stock underlying the outstanding Preferred Stock, in each case as of the applicable date.

(pp) "Record Date" means, with respect to any dividend, distribution or other transaction or event in which the holders of the applicable security have the right to receive any cash, securities or other property or in which such security is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of such security entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

(qq) "Record Holder" means, with respect to any Coupon Payment Date, a holder of record of the shares of Series A Convertible Preferred Stock as such holder appears on the stock register of the Company at the close of business on the related Regular Record Date.

(rr) "Regular Record Date" means, with respect to any Coupon Payment Date, the March 15, June 15, September 15 and December 15, as the case may be, immediately preceding the relevant Coupon Payment Date. These Regular Record Dates shall apply regardless of whether a particular Regular Record Date is a Business Day.

(ss) "Relevant Stock Exchange" means the principal U.S. national or regional securities exchange on which the Class A Common Stock is then listed or, if the Class A Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Class A Common Stock is then listed or admitted for trading.

(tt) "Sale of the Company" means (i) a sale or transfer of all or substantially all of the assets of the Company or any of its Subsidiaries, on a consolidated basis, in any transaction or series of related transactions, (ii) any merger, consolidation or reorganization to which the Company or any of its Subsidiaries are parties, except for a merger, consolidation or reorganization in which, after giving effect to such merger, consolidation or reorganization, the holders of the Company's or such Subsidiary, as the case may be, outstanding equity securities (on a fully-diluted basis) immediately prior to the merger, consolidation or reorganization will own directly or indirectly, immediately following the merger, consolidation or reorganization, equity securities holding a majority of the voting power of the Company or such Subsidiary, as the case may be, in substantially the same proportions vis-à-vis each other as immediately before such transaction, (iii) other than pursuant to Permitted Transfer(s) or in connection with the conversion or exchange of LLC Units pursuant to the LLC Agreement, any sale, transfer or issuance or series of sales, transfers and/or issuances of the equity securities of the Company or any of its Subsidiaries which results in any person, other than a Permitted Party or the holders of the Preferred Stock owning at least twenty percent (20%) of the equity securities of the Company or such Subsidiary, as the case may be, or (iv) the Class A Common Stock ceases to be listed on a nationally recognized stock exchange.

(uu) "Scheduled Trading Day" means any day that is scheduled to be a Trading Day.

(vv) "Securities Purchase Agreement" means that certain Securities Purchase Agreement dated June 25, 2021, by and among the purchasers listed on Exhibit A thereto and the Company.

(ww) "Senior Securities" means each class or series of capital stock of the Company established after the Initial Issue Date, the terms of which expressly provide that such class or series shall rank senior to the Series A Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, redemption, winding-up or dissolution.

(xx) "Spin-Off" means a payment of a dividend or other distribution on the Class A Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange.

(yy) "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof 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, or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interests thereof entitled to control the board of managers, general partner or similar governing body of such entity is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any manager, managing director or general partner of such limited liability company, partnership, association or other business entity.

(zz) "Tax Receivable Agreement" means the Tax Receivable Agreement, dated as of [ ], 2021, by and among the Company and the other parties thereto.

(aaa) "Total Leverage Ratio" has the meaning set forth in the Financing Agreement, dated April 19, 2021, with Wilmington Trust, National Association, as administrative agent and collateral agent, and the lenders party thereto, (the "Financing Agreement"), as in effect on the date of this Certificate of Designations (including the related defined terms contained therein), as modified to: (i) include all Indebtedness of the Company and its Subsidiaries in the numerator and (ii) not allow for the netting of the cash proceeds of any Indebtedness incurred in connection with the calculation of such Total Leverage Ratio that is applied to the balance sheet of the Company or any of its Subsidiaries or for working capital, as applicable (for example, the Company could not borrow $100.0 million, leaving $100.0 million on its balance sheet as a means of circumventing the Total Leverage Ratio incurrence test; however, for avoidance of doubt, in this example cash not raised from the $100.0 million debt incurrence will be netted for purposes of the Total Leverage Ratio); provided that such definition shall exclude cash adjustments for franchise sales; provided, further, it shall be agreed that Consolidated EBITDA for the twelve months ended March 30, 2021 (after giving effect to the exclusion of such cash adjustments for franchise sales) for the purposes of calculating the Total Leverage Ratio for such period is $15,877,257.

(bbb) "Trading Day" means a day on which (i) there is no Market Disruption Event and (ii) trading in the Class A Common Stock generally occurs on the Relevant Stock Exchange; provided that if the Class A Common Stock is not listed or admitted for trading, "Trading Day" means any Business Day.

(ccc) "Transfer" means, as a noun, any voluntary or involuntary transfer, sale, assignment, pledge, hypothecation, the discretionary or obligatory distribution from a trust, or other disposition or encumbrance and, as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate, distribute from a trust or otherwise dispose of or encumber any shares of Series A Convertible Preferred Stock (or any rights, obligations or interests therein or held thereby), including, without limitation, the distribution of any shares of Series A Convertible Preferred Stock by a Person that is a legal entity to its shareholders, members, partners or other beneficiaries upon such Person's liquidation or dissolution, by means of a dividend or otherwise. Transfer shall include, without limitation, all Transfers, whether directly or indirectly (including, with respect to any stockholder that is not a natural person, by virtue of any direct or indirect transfer or equity interests in such stockholder or of any redemption or issuance of equity interests).

(ddd) "VWAP" per share of Class A Common Stock on any Trading Day means the per share volume-weighted average price as displayed by Bloomberg (or its equivalent successor) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is not available, the market value per share of Class A Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose at the Company's sole expense).

Section 4 Preferential Coupons.

(a) Rate. Subject to the rights of holders of any class or series of Senior Securities, a preferential cumulative return on the Fixed Liquidation Preference of the Series A Convertible Preferred Stock (the "Preferential Coupons") shall accumulate daily in arrears, whether or not earned or declared by the Board of Directors, at the Preferential Coupon Rate.

Preferential Coupons shall be payable in cash (other than a PIK Coupon, as described below) quarterly on each Coupon Payment Date at such annual rate, and shall accumulate from the most recent date as to which Preferential Coupons shall have been paid or, if no dividends have been paid, from the Initial Issue Date, whether or not in any Coupon Period or Coupon Periods there have been funds legally available.

Preferential Coupons shall be payable when, as and if declared by the Board of Directors on the relevant Coupon Payment Date to Record Holders on the immediately preceding Regular Record Date, to the extent that such Series A Convertible Preferred Stock remains outstanding on the applicable Coupon Payment Date; provided that the Regular Record Date for any such Preferential Coupon shall not precede the date on which such dividend was so declared. If a Coupon Payment Date is not a Business Day, payment shall be made on the next succeeding Business Day, without any interest or other payment in lieu of interest accruing with respect to this delay.

The amount of Preferential Coupons payable on each share of Series A Convertible Preferred Stock for each Coupon Period shall be computed based upon the actual number of days elapsed during such period over a 360-day year (consisting of twelve 30-day months).

In the event that the Company does not declare and pay any Preferential Coupons in cash as described above, the Fixed Liquidation Preference of the Series A Convertible Preferred Stock shall automatically increase at the PIK Rate, on a compounding basis, on such Coupon Payment Date (the "PIK Coupon" and, together with the Preferential Coupon, the "Preferred Coupons"); provided that the Company shall provide written notice to the holders of Series A Convertible Preferred Stock of such PIK Coupon at least 5 days prior to the Coupon Payment Date immediately preceding the applicable Coupon Payment Date. Thereafter, the Preferential Coupons shall accrue and be payable on such increased Fixed Liquidation Preference and such increased Fixed Liquidation Preference shall be Fixed Liquidation Preference with respect to such Series A Convertible Preferred Stock for all purposes hereunder.

No distributions shall be made on any Junior Securities of the Company unless and until all Preferred Coupons (including any PIK Coupon) for all preceding Coupon Periods have been paid in full in cash for all outstanding shares of Series A Convertible Preferred Stock in accordance with the succeeding Section 4(b).

Notwithstanding anything to the contrary contained herein, any PIK Coupon (1) shall be treated as an accrued but unpaid dividend of the Series A Convertible Preferred Stock that compounds, whether or not declared by the Board of Directors, and (2) shall not be declared as a dividend by the Board of Directors (A) unless and until such PIK Coupon is paid to the holders of the Series A Convertible Preferred Stock immediately in cash (it being understood that no dividends may be declared and paid in securities or otherwise "in kind") or (B) in anticipation of a redemption of the Series A Convertible Preferred Stock or any liquidation of the Company.

(b) Priority of Coupons. So long as any shares of Series A Convertible Preferred Stock remain outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other class or series of Junior Securities, and no Common Stock or any other class or series of Junior Securities shall be purchased, redeemed or otherwise acquired for consideration by the Company or any of its Subsidiaries, unless, in each case, (x) (1) after giving pro forma effect to any such dividend or distribution, purchase, redemption or other acquisition, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of a non-cash distribution, the fair market value of such distribution, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such dividend or distribution, purchase, redemption or other acquisition, as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing, (y) in the case of any such dividend or distribution where, if holders of the Series A Convertible Preferred Stock participated in such dividend or distribution on an as-converted basis, such holders would receive an amount that exceeds the amount payable per annum in cash at the Preferential Coupon Rate, an amount equal to such excess dividend or distribution is declared and paid, respectively, on the Series A Convertible Preferred Stock (such a dividend or distribution on the Series A Convertible Preferred Stock, a "Participating Dividend," and such corresponding dividend or distribution on the Common Stock, the "Junior Participating Dividend"), such that (1) the Record Date and the payment date for such Participating Dividend occur on the same dates as the Record Date and payment date, respectively, for such Junior Participating Dividend; and (2) the kind and amount of consideration payable per share of Series A Convertible Preferred Stock in such Participating Dividend is the same kind and amount of consideration that would be payable in the Junior Participating Dividend in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with Section 9 in respect of one (1) share of Series A Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date, after deducting the amount payable at the Preferential Coupon Rate in cash per annum, and (z) all accumulated and unpaid Preferred Coupons (including any PIK Coupons) for all preceding Coupon Periods and the then current Coupon Period have been and will be paid in full in cash, on all outstanding shares of Series A Convertible Preferred Stock. The foregoing limitation shall not apply to:

(i) any dividend or distribution payable in shares of Common Stock or other Junior Securities, together with cash in lieu of any fractional share;

(ii) purchases, redemptions or other acquisitions of Common Stock or other Junior Securities in connection with the administration of any benefit or other incentive plan, including any employment contract, in the ordinary course of business, including, without limitation, (x) the forfeiture of unvested shares of restricted stock or share withholding or other acquisitions or surrender of shares to which the holder may otherwise be entitled upon exercise, delivery or vesting of equity awards (whether in payment of applicable taxes, the exercise price or otherwise) and (y) the payment of cash in lieu of fractional shares, provided that (1) after giving pro forma effect to any such purchase, redemption or other acquisition, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of non-cash consideration, the fair market value of such consideration, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such purchase, redemption or other acquisition, as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing;

(iii) purchases or deemed purchases or acquisitions of fractional interests in shares of Common Stock or other Junior Securities pursuant to the conversion or exchange provisions of such shares of Junior Securities or any securities exchangeable for or convertible into shares of Common Stock or other Junior Securities;

(iv) any dividends or distributions of rights or Common Stock or other Junior Securities in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan;

(v) any other purchases, other than purchases from a Permitted Party, of Common Stock or other Junior Securities, including under a stock repurchase plan; provided that (1) after giving pro forma effect to any such purchase, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of non-cash consideration, the fair market value of such consideration, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such purchase as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing;

(vi) the exchange or conversion of Junior Securities for or into other Junior Securities or of Parity Securities for or into other Parity Securities (with the same or lesser aggregate liquidation preference) or Junior Securities and, in each case, the payment of cash in lieu of fractional shares.

When Preferential Coupons (i) have not been declared and paid in full in cash on any Coupon Payment Date (including PIK Coupon), or (ii) have been declared but have not been paid in full in cash on any Coupon Payment Date (including PIK Coupon), no dividends may be declared or paid on any shares of Parity Securities (the issuance of which is subject to the consent of the holders of the Series A Convertible Preferred Stock as set forth herein) unless all prior Preferential Coupon (including PIK Coupon) are paid in full in cash on the Series A Convertible Preferred Stock. Thereafter, if declared by the Board of Directors, dividends shall be declared on the Series A Convertible Preferred Stock such that the respective amounts in cash of such dividends declared on the Series A Convertible Preferred Stock and such shares of Parity Securities (the issuance of which is subject to the consent of the Preferred Members as set forth herein) shall be allocated pro rata among the holders of the Series A Convertible Preferred Stock and the holders of any shares of Parity Securities then outstanding.

Subject to the foregoing, and not otherwise, such dividends as may be determined by the Board of Directors or the board of managers of the Operating LLC (in the case of LLC Units), or an authorized committee thereof, may be declared and paid (payable in cash, securities or other property) on any securities, including LLC Units and other Junior Securities, from time to time out of any funds legally available for such payment, and holders of Series A Convertible Preferred Stock shall not be entitled to participate in any such dividends other than as provided in this Certificate of Designations.

Section 5 Liquidation, Dissolution or Winding Up.

(a) In the event of any voluntary or involuntary liquidation, winding-up or dissolution of the Company, each holder of Series A Convertible Preferred Stock shall be entitled to receive, per share of Series A Convertible Preferred Stock, the greater of (x) the Fixed Liquidation Preference per share of the Series A Convertible Preferred Stock plus the Applicable Premium (if any) and (y) the amount such holder would be entitled to receive on an as-converted basis if such holder elected to convert its Series A Convertible Preferred Stock on the date of such liquidation,winding-up or dissolution pursuant to Section 9 (such greater amount, the "Liquidation Preference"), plus an amount (the "Liquidation Coupon Amount") equal to the accumulated and unpaid Preferential Coupons on such share of Series A Convertible Preferred Stock since the most recent Coupon Payment Date, to, but excluding, the date fixed for liquidation, winding-up or dissolution to be paid out of the assets of the Company legally available for distribution to its stockholders, after satisfaction of debt and other liabilities owed to the Company's creditors and holders of shares of any Senior Securities and before any payment or distribution is made to holders of any Junior Securities, including, without limitation, Common Stock.

(b) If, upon the voluntary or involuntary liquidation, winding-up or dissolution of the Company, the amounts payable with respect to (A) the Liquidation Preference plus the Liquidation Coupon Amount on the Series A Convertible Preferred Stock and (B) the liquidation preference of, and the amount of accumulated and unpaid dividends to, but excluding, the date fixed for liquidation, dissolution or winding up, on all Parity Securities, if applicable, are not paid in full, the holders of the Series A Convertible Preferred Stock and all holders of any such Parity Securities shall share equally and ratably in any distribution of the Company's assets in proportion to their respective liquidation preferences and amounts equal to the accumulated and unpaid dividends to which they are entitled.

(c) After the payment to any holder of Series A Convertible Preferred Stock of the full amount of the Liquidation Preference and the Liquidation Coupon Amount for such holder's Series A Convertible Preferred Stock, such holder shall have no right or claim to any of the remaining assets of the Company.

(d) Neither the sale, lease nor exchange of all or substantially all of Company's assets or business (other than in connection with the liquidation, winding-up or dissolution of the Company), nor its merger or consolidation into or with any other Person, shall be deemed to be the voluntary or involuntary liquidation, winding-up or dissolution of the Company.

Section 6 Voting Powers.

(a) Voting. Each holder of Series A Convertible Preferred Stock shall be entitled to the whole number of votes equal to the number of whole shares of Class A Common Stock into which such holder's Series A Convertible Preferred Stock would be convertible on the record date for the vote or consent of holders of Class A Common Stock or if no record date is established, at the date such vote or consent is taken, and shall otherwise have voting rights and consent rights per share equal to the voting rights and consent rights of the Class A Common Stock to the fullest extent permitted by law. Each holder of Series A Convertible Preferred Stock shall be entitled to receive the same prior notice of any meeting as is provided to the holders of the Class A Common Stock, as well as prior notice of all actions to be taken by legally available means in lieu of a meeting, and shall vote as a class with the holders of Class A Common Stock as if they were a single class of securities upon any matter submitted to a vote of stockholders, except those matters required by law or by the terms hereof to be submitted to a class vote of the Series A Convertible Preferred Stock, in which case the holders of Series A Convertible Preferred Stock only shall vote as a separate class.

(b) Consent Rights. So long as any shares of Series A Convertible Preferred Stock are outstanding, the Company shall not, and shall cause its Subsidiaries not to, without the affirmative vote or consent of the Holder Majority, given in person or by proxy, either in writing without a meeting or by vote at an annual or special meeting of such holders:

(i) amend or alter the provisions of the Charter or bylaws of the Company or the LLC Agreement (or certificate of formation of the Operating LLC), or equivalent organizational documents, so as to authorize or create, or increase the authorized number of, any class or series of Senior Securities or Parity Securities;

(ii) amend, alter or repeal the provisions of the Charter or bylaws of the Company or the LLC Agreement (or certificate of formation of the Operating LLC), or equivalent organizational documents, so as to adversely affect the special rights, preferences or voting powers of the shares of Series A Convertible Preferred Stock or impose any additional obligations on the holders of the Series A Convertible Preferred Stock;

(iii) issue any Parity Securities or Senior Securities or any securities convertible into, exercisable for or exchangeable into Parity Securities or Senior Securities, other than any shares of Series A-1 Convertible Preferred Stock in exchange for shares of Series A Convertible Preferred Stock (or vice versa) pursuant to Section 10;

(iv) make any dividends or distributions, or purchase, redeem or otherwise acquire any shares of capital stock or any securities convertible into, exercisable for or exchangeable into capital stock, except as permitted under Section 4(b), or cause any Spin-Off to occur;

(v) So long as the Ownership Threshold has been met, (1) with respect to the Company and its Subsidiaries (other than the Operating LLC and its Subsidiaries), incur any Indebtedness or other liabilities except those liabilities incidental to issuances of equity securities and other customary activities of an "Up-C Issuer" or (2) other than under any capital leases or in accordance with the Securities Purchase Agreement, incur any Indebtedness or create any lien or security interest in any assets in connection with Indebtedness (other than in a comparable refinancings on customary then-market terms, in an amount not to exceed the principal amount being

refinanced, plus customary premiums and transaction costs, which may not be more restrictive with respect to distributions on and conversions and repurchases or redemptions of the Series A Convertible Preferred Stock than such provisions contained in the Financing Agreement as in effect on the date hereof); provided that Subsidiaries of the Company (and, if the Company owns 100% of the equity interests in the Operating LLC, the Company) may incur Indebtedness (which may not be more restrictive with respect to distributions on and conversions and repurchases or redemptions of the Series A Convertible Preferred Stock than such provisions contained in the Financing Agreement as in effect on the date hereof) if, on the date of incurrence of such Indebtedness (and after giving pro forma effect to any Indebtedness that would be incurred or assumed in connection with such action), (1) the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis for such incurrence and the use of proceeds thereof, (2) the Company's market capitalization (based on the Last Reported Sales Price of the Class A Common Stock for any 20 Trading Days in a 30 consecutive Trading Day period ending on the date of such incurrence and, for the avoidance of doubt, excluding any preferred stock or shares of Class A Common Stock underlying any preferred stock or any other Parity Securities or Senior Securities) (the "Market Capitalization") equals or exceeds $500 million (the "Equity Cushion") and (3) no Event of Default has occurred and is continuing (other than an Event of Default with respect to Section 19);

(vi) create or incur additional layers of Indebtedness or preferred equity after the Initial Issue Date, excluding, in the case of the Operating LLC and its Subsidiaries, Indebtedness existing as of the Initial Issue Date (including any refinancing thereof), other than any ordinary course liabilities, intercompany Indebtedness, purchase money and capital lease obligations, sale and leaseback obligations, earn-out obligations, and other deferred purchase price obligations;

(vii) (1) enter into any transactions with an Affiliate,provided that the Company and its Affiliates are permitted to enter into or engage in (i) transactions among the Company, its consolidated Affiliates and its and their respective Subsidiaries; (ii) compensation arrangements (including equity-based compensation) and arrangements for the reimbursement of expenses of, in each case, employees, officers and consultants; provided that, for executive officers and directors, such arrangement are approved by the compensation committee (or its equivalent) on the Board of Directors, (iii) transactions pursuant to agreements in effect as of the Initial Issuance Date, and (iv) other transactions which are entered into in the ordinary course of business on terms and conditions substantially as favorable to the Company as would be obtainable by it in a comparable arm's length transaction with a Person other than an Affiliate and which is approved by a majority of the members of the Board of Directors that are disinterested in the transaction or (2) make any payment under the Tax Receivable Agreement payable upon a Sale of the Company, "Change of Control" or similar term, unless the Mandatory Redemption Price has been paid in full in connection with such transaction;

(viii) So long as the Ownership Threshold has been met, sell or dispose of any assets in a transaction or series of related transactions unless (1) the pro forma Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x, (2) the Company's Market Capitalization equals or exceeds the Equity Cushion on a pro forma basis, (3) no Event of Default has occurred and is continuing, and (4) such sale or disposition is for fair market value (as determined by the Board of Directors in good faith), in each case except for dispositions in an annual amount not exceeding $40,000,000; or

(ix) with respect to the Company, consolidate, amalgamate or merge with or into any other entity unless (i) such entity is the continuing entity (in the case of a merger or amalgamation), or (ii) if the Company is not the continuing entity, the successor entity is organized and existing under the laws of the United States of America or any state thereof, the District of Columbia or any territory thereof, and, in each case such successor entity expressly assumes, by binding agreement, all obligations with respect to the Series A Convertible Preferred Stock, and, in each case (x) the Series A Convertible Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity (or the Series A Convertible Preferred Stock are otherwise exchanged or reclassified), are converted or reclassified into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent or the right to receive such securities; and (y) the Series A Convertible Preferred Stock that remain outstanding or such shares of preference securities, as the case may be, have such rights, preferences and voting powers that, taken as a whole, are not less favorable to the holders thereof than the rights, preferences and voting powers of the Series A Convertible Preferred Stock immediately prior to the consummation of such transaction, and the holders of the Series A Convertible Preferred Stock are not adversely affected thereby.

(c) Board of Directors. So long as 50% of the aggregate of shares of Series A Convertible Preferred Stock issued to the MSD Investor on the Initial Issue Date remain outstanding and held by the MSD Investor (including any shares of Series A Convertible Preferred Stock issued or issuable upon conversion of Series A-1 Preferred Stock pursuant to Section 10), the MSD Investors shall be entitled to appoint elect one (1) director (the "Series A Director") to the Board of Directors, which right may be waived by the MSD Investor in its sole discretion. Vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification or removal of the Series A Director may be filled solely by the appointment of the MSD Investors. The term of office of the Series A Director shall terminate on the earlier of: (i) the date on which less than 50% of the aggregate of shares of Series A Convertible Preferred Stock issued on the Initial Issue Date to the MSD Investor are outstanding and held by the MSD Investor (including any shares of Series A Convertible Preferred Stock issued or issuable upon conversion of Series A-1 Preferred Stock pursuant to Section 10) (at which time such Series A Director shall automatically no longer be a director on the Board and shall not be entitled to receive notice of Board of Directors meetings, to attend or vote at Board of Directors meetings or be considered a member of the Board of Directors for any purpose including for determining whether a quorum of directors is present at a meeting of the directors); (ii) the death, resignation, retirement, disqualification or removal of such Series A Director; or (iii) the due election and qualification of a successor to such Series A Director.

Section 7 Redemption.

(a) General. Other than as specifically permitted by this Certificate of Designations, the Company is not required to redeem any of the outstanding Series A Convertible Preferred Stock.

(b) Redemption at the Option of the Company.

(i) At any time after the date that is five (5) years after the Initial Issue Date until the date that is six (6) years after the Initial Issue Date, the Company shall have the right to redeem all, but not less than all, of the Series A Convertible Preferred Stock then outstanding at a redemption price in cash equal to the product of (x) the Fixed Liquidation Preference of the Series A Convertible Preferred Stock then outstanding and (y) 105%, plus accumulated and unpaid dividends to, but not including, the date of redemption.

(ii) At any time after the date that is six (6) years after the Initial Issue Date, the Company shall have the right to redeem all, but not less than all, of the Series A Convertible Preferred Stock then outstanding at a redemption price in cash equal to the Fixed Liquidation Preference of the Series A Convertible Preferred Stock then outstanding, plus accumulated and unpaid dividends to, but not including, the date of redemption.

(iii) The Company may exercise its right to redeem the Series A Convertible Preferred Stock under this Section 7(b) by delivering a written notice (the "Redemption Notice") thereof to all of the holders of Series A Convertible Preferred Stock and the date such holders are given such notice is referred to as a "Redemption Notice Date". Each Redemption Notice shall be irrevocable. Such Redemption Notice shall (A) state the date on which the redemption shall occur, which date shall be no earlier than 10 days nor later than 30 days after the Redemption Notice Date (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day), and (B) state the redemption price per share of Series A Convertible Preferred Stock to be paid on the redemption date. Holders of Series A Convertible Preferred Stock may continue to exercise their right to convert Series A Convertible Preferred Stock under this Certificate of Designations after the Redemption Notice Date but prior to the date of redemption.

(c) Mandatory Redemption. (i) At any time after the date that is eight (8) years after the Initial Issue Date, (ii) upon a Sale of the Company or (iii) at any time after the occurrence and continuance of an Event of Default, the holders of the Series A Convertible Preferred Stock shall have the right to require the Company to redeem all, but not less than all, of the Series A Convertible Preferred Stock then outstanding at a redemption price in cash equal to the greater of (x) the fair market value per share of Series A Convertible Preferred Stock (based on the Average VWAP per share of Class A Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Mandatory Redemption Notice), calculated on an as-if converted basis as if such Series A Convertible Preferred Stock was converted pursuant to Section 9 and (y) the Fixed Liquidation Preference, plus accrued and unpaid dividends to, but not including, the date of redemption (the "Mandatory Redemption Price"), by delivery of written notice thereof (the "Mandatory Redemption Notice") to the Company; provided that if a Sale of the Company occurs prior to the date that is six (6) years after the Initial Issue Date, clause (y) of the definition of Mandatory Redemption Price shall also include a cash amount equal to the Applicable Premium. Such Mandatory Redemption Notice shall (A) state the date on which the redemption shall occur, which date shall be no earlier than 10 days nor later than 30 days following the date of delivery of such Mandatory Redemption Notice (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day), and (B) state the Mandatory Redemption Price per share of Series A Convertible Preferred Stock to be paid on the redemption date. For the avoidance of doubt, Holders of Series A Convertible Preferred Stock may continue to exercise their right to convert their Series A Convertible Preferred Stock under this Certificate of Designations at any time after or prior to the date of the Mandatory Redemption Notice but prior to the date of redemption.

(i) Effect of Redemption. Effective immediately prior to the close of business on the day before any shares of Series A Convertible Preferred Stock are redeemed pursuant to this Certificate of Designations, Preferential Coupons shall no longer accrue or be declared on any such shares of Series A Convertible Preferred Stock, and such shares of Series A Convertible Preferred Stock shall cease to be outstanding.

(ii) Status of Redeemed Shares. Shares of Series A Convertible Preferred Stock redeemed in accordance with this Certificate of Designation shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as to a particular series by the Board of Directors pursuant to provisions of the Charter.

Section 8 Mandatory Conversion.

(a) If at any time, or from time to time, from and after the second (2nd) anniversary, but on or prior to the third anniversary, of the Initial Issue Date, the Last Reported Sale Price of the Class A Common Stock has equaled or exceeded 150% of the Conversion Price for at least 20 out of any 30 consecutive Trading Days immediately preceding the Mandatory Conversion Notice Date, and the Liquidity Conditions are met, the Company shall have the right to require the holders of Series A Convertible Preferred Stock to convert all, or any portion, of the outstanding Series A Convertible Preferred Stock on the Mandatory Conversion Date (a "Mandatory Conversion"), as designated in the Mandatory Conversion Notice relating to the applicable Mandatory Conversion, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Mandatory Conversion Date) *divided* by the Conversion Price as of the applicable Mandatory Conversion Date.

(b) If at any time, or from time to time, after the third (3rd) anniversary of the closing of the Initial Issue Date, the Last Reported Sale Price of the Class A Common Stock has equaled or exceeded 125% of the Conversion Price for at least 20 out of any 30 consecutive Trading Days immediately preceding the Mandatory Conversion Notice Date, and the Liquidity Conditions are met, the Company shall have the right to effect a Mandatory Conversion of the outstanding Series A Convertible Preferred Stock on the Mandatory Conversion Date, as designated in the Mandatory Conversion Notice relating to the applicable Mandatory Conversion, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Mandatory Conversion Date) *divided* by the Conversion Price as of the applicable Mandatory Conversion Date.

(c) The Company may exercise its right to require conversion under this Section 8 by delivering a written notice thereof to all holders of Series A Convertible Preferred Stock (a "Mandatory Conversion Notice" and such delivery is referred to as a "Mandatory Conversion Notice Date"). Each Mandatory Conversion Notice shall be irrevocable. Each Mandatory Conversion Notice shall state (x) the Trading Day on which the applicable Mandatory Conversion shall occur, which Trading Day shall be the twentieth (20th) Trading Day following the applicable Mandatory Conversion Notice Date (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day) (a "Mandatory Conversion Date"), (y) the number of shares of Series A Convertible Preferred Stock which the Company has elected to be subject to such Mandatory Conversion from such holder and in the aggregate pursuant to this Section 8 and (z) the number of shares of Class A Common Stock to be issued to such holder on the applicable Mandatory Conversion Date.

(a) **Section 9 Optional Conversion.** Subject to satisfaction of the conversion procedures set forth in this Section 9, each holder of share of Series A Convertible Preferred Stock shall have the option to convert its Series A Convertible Preferred Stock, in whole or in part (but in no event less than one share of Series A Convertible Preferred Stock), at any time, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Conversion Date) *divided* by the Conversion Price as of the applicable Conversion Date.

(b) To effect a conversion, pursuant to Section 9, a holder of Series A Convertible Preferred Stock must:

(i) complete and manually sign the conversion notice attached hereto as Exhibit A or a facsimile of such conversion notice;

(ii) deliver the completed conversion notice and the shares of Series A Convertible Preferred Stock to be converted to the Company;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay all transfer or similar taxes or duties, if any.

(c) A conversion pursuant to Section 9 shall be effective on the date on which a holder of shares of Series A Convertible Preferred Stock has satisfied the foregoing requirements, to the extent applicable (the "Conversion Date").

(d) A holder of shares of Series A Convertible Preferred Stock shall not be required to pay any transfer or similar taxes or duties relating to the issuance or delivery of shares of Class A Common Stock upon conversion, but such holder shall be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of shares of Class A Common Stock in a name other than the name of such holder.

(e) The Class A Common Stock issuable upon conversion shall be issued and credited to the account of the converting holder in the records of the applicable transfer agent only after all applicable taxes and duties, if any, payable by such converting holder have been paid in full, and such shares will be delivered on the latest of (i) the second Business Day immediately succeeding the Conversion Date and (ii) the Business Day after the holder has paid in full all applicable taxes and duties, if any.

(f) The Person or Persons entitled to receive the Class A Common Stock issuable upon conversion shall be treated for all purposes as the record holder(s) of such units, as the case may be, as of the close of business on the applicable Conversion Date or Mandatory Conversion Date, as applicable. Except as set forth elsewhere herein, prior to the close of business on such applicable Conversion Date, the Class A Common Stock issuable upon conversion of any Series A Convertible Preferred Stock shall not be deemed to be outstanding for any purpose, and holders shall have no rights, powers or preferences with respect to such units by virtue of holding Series A Convertible Preferred Stock.

(g) In the event that a conversion is effected with respect to shares of Series A Convertible Preferred Stock representing less than all the shares of the Series A Convertible Preferred Stock held by a holder thereof, upon such conversion the Company shall execute and deliver to the holder thereof, at the expense of the Company, a certificate or book-entry position evidencing the shares of Series A Convertible Preferred Stock as to which conversion was not effected.

(h) In the event that a holder of Series A Convertible Preferred Stock shall not by written notice designate the name in which shares of Class A Common Stock to be issued upon conversion of such Series A Convertible Preferred Stock should be registered, the Company shall be entitled to register such shares in the name of the holder as shown on the records of the Company.

(i) Shares of Series A Convertible Preferred Stock shall cease to be outstanding on the applicable Conversion Date or Mandatory Conversion Date, as applicable, subject to the right of holders of such Series A Convertible Preferred Stock to receive Class A Common Stock issuable upon conversion of such Series A Convertible Preferred Stock.

(j) *Fractional Shares*. No fractional shares of Class A Common Stock shall be issued to holders of Series A Convertible Preferred Stock as a result of any conversion of Series A Convertible Preferred Stock, and any fractional shares of Class A Common Stock shall be rounded to the nearest whole number.

Section 10 Conversion Procedures; Transfers; Regulatory Matters.

(a) If a holder of Series A Convertible Preferred Stock determines, in its sole judgment upon the advice of counsel, that any conversion pursuant to the terms hereof would be subject to the provisions of the HSR Act, the Company shall file, or cause its ultimate parent entity as that term is defined in the HSR Act to file, as soon as practicable after the date on which the Company receives notice from such holder of Series A Convertible Preferred Stock of the applicability of the HSR Act and a request to so file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form and any supplemental information required to be filed by it pursuant to the HSR Act in connection with the conversion of any Series A Convertible Preferred Stock (and in any event the Company shall make such filing no later than seven (7) Business Days after the date on which the holder of Series A Convertible Preferred Stock filed with the FTC and DOJ the notification and report form required to be filed by the holder of Series A Convertible Preferred Stock pursuant to the HSR Act in connection with the conversion of any shares of Series A Convertible Preferred Stock. Any such notification and report form and supplemental information will be in full compliance with the requirements of the HSR Act. If a holder of Series A Convertible Preferred Stock determines, in its sole judgment upon the advice of counsel, that any conversion pursuant to the terms hereof could be subject to the provisions of any non-US antitrust, merger control, or competition law (collectively, the "Foreign Antitrust Laws"), the Company will cooperate and supply promptly to the holder of the Series A Preferred Stock such information and assistance as the holder of the Series A Preferred Stock may reasonably request to assess whether any conversion would be subject to filing requirements under any Foreign Antitrust Law. If the holder determines that a filing is required or advisable under any Foreign Antitrust Law in connection with any conversion, and if the Company is required to make a

separate filing under any such Foreign Antitrust Law the Company will promptly do so after being notified of the requirement by the holder of Series A Convertible Preferred Stock. The Company will furnish to the holder of Series A Convertible Preferred Stock promptly (but in no event more than five days after receipt of a reasonable request therefore) such information and assistance as the holder of Series A Convertible Preferred Stock may reasonably request in connection with the preparation of any filing or submission to be filed by the holder of Series A Convertible Preferred Stock under the HSR Act or any applicable Foreign Antitrust Law. The Company shall respond promptly after receiving any inquiries or requests for additional information from the FTC, the DOJ, or any governmental entity under any Foreign Antitrust Law in connection with any conversions of Series A Convertible Preferred Stock. The Company shall keep the holder of Series A Convertible Preferred Stock apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC, the DOJ, or any governmental entity in connection with any conversions of Series A Convertible Preferred Stock. The Company shall bear all filing or other fees required to be paid by the Company and the holder of Series A Convertible Preferred Stock (or the "ultimate parent entity" of the holder of Series A Convertible Preferred Stock, if any) under the HSR Act or any other applicable law in connection with such filings and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Company and the holder of Series A Convertible Preferred Stock in connection with the preparation of such filings and responses to inquiries or requests. In the event that this Section 10(b) is applicable to any conversion, the delivery of any shares of Class A Common Stock upon conversion shall be subject to the receipt of clearances, approvals, and the expiration or earlier termination of the waiting periods under the HSR Act and Foreign Antitrust Laws (with the Conversion Date or Mandatory Conversion Date, as applicable, being deemed to be the date immediately following the date of the receipt of the last of the required clearances, approvals, and waiting period expirations or early terminations).

(b) Transfers. At such time as any Transfer, other than a Transfer to a Permitted Transferee, of Series A Convertible Preferred Stock by an Initial Holder (or its Permitted Transferee) occurs, then all shares of the Series A Convertible Preferred Stock Transferred by such Initial Holder (or its Permitted Transferee) shall immediately and automatically upon such Transfer convert on a one-for-one basis to shares of Series A-1 Convertible Preferred Stock (the "Transfer Conversion") in accordance with the procedures identified in this Section 10.

(i) An Initial Holder (or its Permitted Transferee) shall provide written notice to the Company at least two (2) Business Days prior to a direct Transfer (other than a Transfer to a Permitted Transferee). On the settlement date for such Transfer (subject to the surrender to the Company of the shares of Series A Convertible Preferred Stock being Transferred), the Company will deliver or cause to be delivered to the transferee of such shares in respect of each share of Series A Convertible Preferred Stock being Transferred, certificates or book-entry positions representing one (1) validly issued, fully paid and nonassessable share (as equitably adjusted for any stock split, reverse stock split, combination, recapitalization or similar event with respect to the Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock, as applicable) of Series A-1 Convertible Preferred Stock. This conversion will be deemed to have been made on the effective date of the Transfer so that the rights of the holder of shares of the Series A Convertible Preferred Stock as to the shares being converted will cease, and the Transferee shall only have the right to receive the shares of Series A-1 Convertible Preferred Stock deliverable upon Transfer and conversion, and, if applicable, the person entitled to receive shares of Series A-1 Convertible Preferred Stock will be treated for all purposes as having become the record holder of those shares of Series A-1 Convertible Preferred Stock as of the date of the Transfer.

(ii) All accumulated but unpaid dividends on such shares of Series A Convertible Preferred Stock immediately prior to such Transfer shall be converted into an equivalent amount of accumulated but unpaid dividends on shares of Series A-1 Convertible Preferred Stock immediately following such Transfer.

(c) Notwithstanding anything to the contrary contained herein, other than in the case of a Mandatory Conversion, a holder of Series A Convertible Preferred Stock shall not be entitled to receive shares of Common Stock or any other "equity securities" (as defined in the Exchange Act) and the rules and regulations promulgated thereunder) in the Company (together with the Common Stock, "Equity Interests") upon any conversion of shares of Series A Convertible Preferred Stock to the extent (but only to the extent) that such exercise or receipt would cause any holder of Series A Convertible Preferred Stock to become, directly or indirectly, a "beneficial owner" (within the meaning of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) of a number of Equity Interests of a class that is registered under the Exchange Act which exceeds the Maximum Percentage (as defined below) of the Equity Interests of such class that are outstanding at such time. This limitation on beneficial ownership may be increased, decreased or terminated, in the holder of Series A Convertible Preferred Stock's sole discretion, upon 61 days' written notice to the Company by the holder of Series A Convertible Preferred Stock. Any purported delivery of Equity Interests in connection with the conversion of any shares of Series A Convertible Preferred Stock prior to the termination of this restriction in accordance herewith shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the holder of Series A Convertible Preferred Stock becoming the beneficial owner of more than the Maximum Percentage of the Equity Interests of a class that is registered under the Exchange Act that is outstanding at such time. If any delivery of Equity Interests owed to a holder of Series A Convertible Preferred Stock upon conversion is not made, in whole or in part, as a result of this limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall deliver such Equity Interests as promptly as practicable after the holder of Series A Convertible Preferred Stock gives notice to the Company that such delivery would not result in such limitation being triggered or upon termination of the restriction in accordance with the terms hereof. For purposes of this Section 10(d), (i) the term "Maximum Percentage" shall mean 9.99%. For any reason at any time, upon written or oral request of the holder of Series A Convertible Preferred Stock, the Company shall, within two Business Days of such request, confirm orally and in writing to the holder of Series A Convertible Preferred Stock the number of Equity Interests of any class then outstanding. The provisions of this clause (d) shall be construed, corrected and implemented in a manner so as to effectuate the intended beneficial ownership limitation herein contained.

Section 11 Anti-Dilution Adjustments to the Conversion Rate.

(a) The Conversion Rate shall be adjusted as set forth in thisSection 11, except that the Company shall not make any adjustments to the Conversion Rate if holders of Series A Convertible Preferred Stock participate (other than in the case of a share or unit split or share or unit combination), at the same time and upon the same terms as holders of Class A Common Stock, and solely as a result of holding the Series A Convertible Preferred Stock, in any of the transactions set

forth in Sections 11(b)-(f) without having to convert their Series A Convertible Preferred Stock as if they held a number of shares of Class A Common Stock equal to (x) the Fixed Liquidation Preference divided by the Conversion Price as of the Record Date for such transaction, multiplied by (y) the number of shares of Series A Convertible Preferred Stock held by such holder. The Conversion Rate shall not, however, be adjusted with respect to any use of the proceeds of the offer and sale of the Series A Convertible Preferred Stock pursuant to the Securities Purchase Agreement or in connection with any transaction contemplated by the Up-C Steps Memo (as defined in the Securities Purchase Agreement).

(b) If the Company exclusively issues shares of Class A Common Stock as a dividend or distribution on shares of Class A Common Stock, or if the Company effects a share split or share combination of the Class A Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such Effective Date, as applicable;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and

OS_1 = the number of shares of Class A Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 11(b) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type set forth in this Section 11(b) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the purposes of this Section 11(b), the number of shares of Class A Common Stock outstanding immediately prior to the close of business on the Record Date and the number of shares of Class A Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination shall, in each case, not include shares that the Company holds in treasury. The Company shall not pay any dividend or make any distribution on shares of Class A Common Stock that it holds in treasury.

(c) If the Company issues to all or substantially all holders of Class A Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after

the announcement date of such issuance, to subscribe for or purchase shares of Class A Common Stock at a price per share that is less than the Average VWAP per share of Class A Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date;

X = the total number of shares of Class A Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Class A Common Stock equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 11(c) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Class A Common Stock are not delivered after the exercise of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Class A Common Stock actually delivered, if any. If such rights, options or warrants are not so issued, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For the purpose of this Section 11(c), in determining whether any rights, options or warrants entitle the holders of Class A Common Stock to subscribe for or purchase shares of Class A Common Stock at less than such Average VWAP per share for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Class A Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors or a committee thereof.

(d) If the Company distributes shares of its capital stock, evidences of the Company's indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities, to all or substantially all holders of Class A Common Stock, excluding:

(i) dividends, distributions or issuances as to which the provisions set forth in Section 11(b) or Section 11(c) shall apply;

(ii) any dividends and distributions upon conversion of, or in exchange for, shares of Class A Common Stock in connection with a recapitalization, reclassification, change, consolidation, merger or other combination, share exchange, or sale, lease or other transfer or disposition resulting in the change in the conversion consideration as set forth under Section 12;

(iii) except as otherwise set forth in Section 11(g), rights issued pursuant to a shareholder rights plan adopted by the Company; and

(iv) Spin-Offs as to which the provisions set forth below in this Section 11(d) shall apply;

then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors or a committee thereof in good faith) of the shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants so distributed, expressed as an amount per share of Class A Common Stock on the Ex-Date for such distribution.

Any increase made under the portion of this Section 11(d) will become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP0" (as defined above), or if the difference is less than $1.00, in lieu of the foregoing increase, each holder of Series A Convertible Preferred Stock shall receive, in respect of each share of Series A Convertible Preferred Stock, at the same time and upon the same terms as holders of Class A

Common Stock, the amount and kind of the Company's capital stock, evidences of the Company's indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities that such holder would have received if such holder owned a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference divided by the Conversion Price in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 11(d) where there has been a Spin-Off, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Ex-Date for the Spin-Off (the "Valuation Period");

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV_0 = the Average VWAP per share of the capital stock or similar equity interest distributed to holders of Class A Common Stock applicable to one share of Class A Common Stock over the Valuation Period; and

MP_0 = the Average VWAP per share of Class A Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph will become effective at the close of business on the last Trading Day of the Valuation Period.

Notwithstanding the foregoing, if any date for determining the number of shares of Class A Common Stock issuable to a holder of Series A Convertible Preferred Stock occurs during the Valuation Period, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the beginning of the Valuation Period and such determination date for purposes of determining the Conversion Rate. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors or a committee thereof determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For purposes of this Section 11(d) (and subject in all respects to Section 11(b) and Section 11(c):

(i) rights, options or warrants distributed by the Company to all or substantially all holders of the Class A Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Class A Common Stock (either initially or under certain conditions), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (1) are deemed to be transferred with such shares of the Class A Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of the Class A Common Stock, shall be deemed not to have been distributed for purposes of this Section 11(d) (and no adjustment to the Conversion Rate under this Section 11(d) shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 11(d).

(ii) If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Initial Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

(iii) In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding clause (ii)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this clause (iii) was made:

A. in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution pursuant to Section 11(e), equal to the per share redemption or repurchase price received by a holder or holders of Class A Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Common Stock as of the date of such redemption or repurchase; and

B. in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued;

provided that, in each case, such rights, options or warrants are deemed to be transferred with such shares of the Class A Common Stock and are also issued in respect of future issuances of the Class A Common Stock.

For purposes of Section 11(b), Section 11(c) and this Section 11(d), if any dividend or distribution to which this Section 11(d) is applicable includes one or both of:

(i) a dividend or distribution of shares of Class A Common Stock to which Section 11(b) is applicable (the "Clause A Distribution"); or

(ii) an issuance of rights, options or warrants to which Section 11(c) is applicable (the "Clause B Distribution"), then:

A. such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 11(d) is applicable (the "Clause C Distribution") and the Conversion Rate adjustment required by this Section 11(d) with respect to such Clause C Distribution shall then be made; and

B. the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and the Conversion Rate adjustment required by Section 11(b) and Section 11(c) with respect thereto shall then be made, except that, if determined by the Company (I) the "Record Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Class A Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date" within the meaning of Section 11(b) or "outstanding immediately prior to close of business on such Record Date" within the meaning of Section 11(c).

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for Class A Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Class A Common Stock exceeds the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

CR_1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors or a committee thereof in good faith) paid or payable for shares purchased in such tender or exchange offer;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Class A Common Stock outstanding immediately after the Expiration Date (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the Average VWAP of Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date (the "Averaging Period").

The increase to the Conversion Rate under the preceding paragraph will become effective at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date. Notwithstanding the foregoing, if any date for determining the number of shares of Class A Common Stock issuable to a holder of Series A Convertible Preferred Stock occurs within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Expiration Date of such tender or exchange offer and such determination date for purposes of determining the Conversion Rate. For the avoidance of doubt, no adjustment under this Section 11(e) will be made if such adjustment would result in a decrease in the Conversion Rate, except as set forth in the immediately succeeding sentence.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Class A Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

(f) If any cash dividend or distribution is made to all or substantially all holders of Class A Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution;

SP0 = the Last Reported Sale Price of the Class A Common Stock on the Trading Day immediately preceding theEx-Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of Class A Common Stock, excluding any amount the holders of Series A Convertible Preferred Stock received as a Participating Dividend with respect thereto.

Any increase made under this Section 11(f) shall become effective immediately after close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors or a committee thereof determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, each holder of a share of Series A Convertible Preferred Stock shall receive, at the same time and upon the same terms as holders of shares of Class A Common Stock, the amount of cash that such holder would have received if such holder owned a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference divided by the Conversion Price in effect on the Record Date for such cash dividend or distribution.

(g) If, on or after the Initial Issue Date, the Company or any of its Subsidiaries issues or otherwise sells any shares of Class A Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Class A Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this Section 11(g)) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a "Degressive Issuance"), then, effective as of the close of business on such date, the Conversion Rate will be increased to an amount equal to (x) the Fixed Liquidation Preference per share of Series A Convertible Preferred Stock, divided by (y) the Weighted Average Issuance Price. For these purposes, the "Weighted Average Issuance Price" will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where,

CP = the Conversion Price in effect immediately before giving effect to the adjustment required by this Section 11(g);

OS = the number of shares of Class A Common Stock outstanding immediately before such Degressive Issuance;

EP = the Effective Price per share of Class A Common Stock in such Degressive Issuance; and

X = the sum, without duplication, of (x) the total number of shares of Class A Common Stock issued or sold in such Degressive Issuance; and (y) the maximum number of shares of Class A Common Stock underlying such Equity-Linked Securities issued or sold in such Degressive Issuance;

provided, *however*, that (A) the Conversion Rate will not be adjusted pursuant to this Section 11(g) solely as a result of any transaction pursuant to Section 11(j); (B) the issuance of shares of Class A Common Stock pursuant to any such Equity-Linked Securities will not constitute an additional issuance or sale of shares of Class A Common Stock for purposes of this Section 11(g) (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this Section 11(g); and (C) in no event will the Conversion Rate be decreased pursuant to this Section 11(g). For purposes of this Section 11(g), any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Initial Issue Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Rate.

(h) If the Company has a rights plan in effect upon conversion of the Series A Convertible Preferred Stock into Class A Common Stock, the holders of Series A Convertible Preferred Stock shall receive, in addition to any shares of Class A Common Stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of Class A Common Stock in accordance with the provisions of the applicable rights plan, the Conversion Rate will be adjusted at the time of

separation as if the Company distributed to all or substantially all holders of Class A Common Stock, shares of its capital stock, evidences of indebtedness, assets, property, rights, options or warrants as set forth in Section 11(d), subject to readjustment in the event of the expiration, termination or redemption of such rights. The Company and the Board of Directors will take all necessary action in order to render inapplicable any shareholder rights plan or similar arrangement to holders of the Series A Convertible Preferred Stock solely in respect of the Series A Convertible Preferred Stock and the shares of Class A Common Stock issued or issuable upon conversion thereof.

(i) The Company may (but is not required to), to the extent permitted by law and the rules of the Relevant Exchange or any other securities exchange on which the shares of Class A Common Stock is then listed, increase the Conversion Rate by any amount for a period of at least 20 Business Days if such increase is irrevocable during such 20 Business Days and the Board of Directors, or a committee thereof, determines that such increase would be in the best interest of the Company. The Company may also (but is not required to) make such increases in the Conversion Rate as it deems advisable in order to avoid or diminish any income tax to holders of Class A Common Stock resulting from any dividend or distribution of shares of Class A Common Stock or from any event treated as such for income tax purposes or for any other reason.

(j) The Company shall not adjust the Conversion Rate:

(i) upon the issuance of shares of Class A Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Class A Common Stock under any plan;

(ii) upon the issuance of any shares of Class A Common Stock or rights or warrants to purchase such shares of Class A Common Stock pursuant to any present or future benefit or other incentive plan or program of or assumed by the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Class A Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in (ii) of this Section 11(i) and outstanding as of the Initial Issue Date;

(iv) for a change in par value of the Class A Common Stock; or

(v) for stock repurchases that are not tender offers referred to inSection 11(e), including structured or derivative transactions or pursuant to a stock repurchase program approved by the Board of Directors.

(k) Adjustments to the Conversion Rate will be calculated to the nearest 1/10,000th of a share of Class A Common Stock. No adjustment to the Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate; provided, however, that if an adjustment is not made because the adjustment does not change the Conversion Rate by at least 1%, then such adjustment will be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, on each date for determining the number of shares

of Class A Common Stock issuable to a holder of Series A Convertible Preferred Stock upon any conversion of the Series A Convertible Preferred Stock, the Company shall give effect to all adjustments that otherwise had been deferred pursuant to this clause (xi), and those adjustments will no longer be carried forward and taken into account in any future adjustment. Except as otherwise provided above, the Company will be responsible for making all calculations called for under the Series A Convertible Preferred Stock and shall be made in good faith.

(l) Whenever any provision of this Certificate of Designations requires the Company to calculate the VWAP per share of Class A Common Stock over a span of multiple days, the Board of Directors, or any authorized committee thereof, shall make appropriate adjustments in good faith to account for any adjustments to the Conversion Rate that become effective, or any event that would require such an adjustment if the Ex-Date, Effective Date, Record Date or Expiration Date, as the case may be, of such event occurs during the relevant period used to calculate such prices or values, as the case may be.

(m) Whenever the Conversion Rate is to be adjusted, the Company shall:

(i) compute such adjusted Conversion Rate;

(ii) within 5 Business Days after the Conversion Rate is to be adjusted, provide or cause to be provided, a written notice to the holders of Series A Convertible Preferred Stock of the occurrence of such event; and

(iii) within 5 Business Days after the Conversion Rate is to be adjusted, provide or cause to be provided, to the holders of Series A Convertible Preferred Stock, a statement setting forth in reasonable detail the method by which the adjustments to the Conversion Rate were determined and setting forth such adjusted Conversion Rate.

Section 12 Recapitalizations, Reclassifications and Changes of Common Stock. In the event of:

(a) any consolidation or merger of the Company with or into another Person (other than a merger or consolidation in which the Company is the surviving corporation and in which the Class A Common Stock outstanding immediately prior to the merger or consolidation is not exchanged for cash, securities or other property of the Company or another Person);

(b) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(c) any reclassification of Class A Common Stock into another class of Common Stock or any other securities; or

(d) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition),

in each case, as a result of which the Class A Common Stock would be converted into, or exchanged for, stock, other securities or other property or assets (including cash or any combination thereof) (each, a "Reorganization Event"), each share of Series A Convertible Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the holders of the Series A Convertible Preferred Stock, become convertible into the kind of stock, other securities or other property or assets (including cash or any combination thereof) that such holder would have been entitled to receive if such holder had converted its Series A Convertible Preferred Stock into Class A Common Stock immediately prior to such Reorganization Event (such stock, other securities or other property or assets (including cash or any combination thereof), the "Exchange Property," with each "Unit of Exchange Property" meaning the kind and amount of such Exchange Property that a holder of one share of Class A Common Stock is entitled to receive).

If the transaction causes the Class A Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Exchange Property into which the Series A Convertible Preferred Stock shall be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the Class A Common Stock.

The Company shall notify holders of Series A Convertible Preferred Stock of the weighted average referred to in the preceding sentence as soon as practicable after such determination is made.

The number of Units of Exchange Property the Company shall deliver for each share of Series A Convertible Preferred Stock converted following the effective date of such Reorganization Event shall be determined as if references in Section 8 and Section 9 to shares of Class A Common Stock were to Units of Exchange Property (without interest thereon and without any right to dividends or distributions thereon which have a Record Date that is prior to the date such shares of Series A Convertible Preferred Stock are actually converted).

On or before the date the Reorganization Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee person (if not the Company) of such Reorganization Event (the "Successor Person") will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Rate in a manner consistent with this Section 12; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the holders of the Series A Convertible Preferred Stock and to give effect to this Section 12. If the Exchange Property includes shares of stock or other securities or assets (other than cash) of a person other than the Successor Person, then such other person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the holders of the Series A Convertible Preferred Stock.

The above provisions of this Section 12 shall similarly apply to successive Reorganization Events, and the provisions of Section 11 shall apply to any shares of capital stock or ADRs of the Company (or any successor thereto) received by the holders of Class A Common Stock in any such Reorganization Event.

The Company (or any successor thereto) provide written notice to the holders of Series A Convertible Preferred Stock of the occurrence of any Reorganization Event and of the kind and amount of cash, securities or other property that constitute the Exchange Property no later than the effective date of the Reorganization Event. Failure to deliver such notice shall not affect the operation of this Section 12.

Section 13 Events of Default.

(a) If any of the following events occur, it shall be an event of default (each, an "Event of Default") under the Series A Convertible Preferred Stock:

(i) The Company fails to pay the Mandatory Redemption Price when due as set forth herein and such breach continues for a period of three (3) days after written notice from the holder of the Series A Convertible Preferred Stock;

(ii) The Company fails to issue shares of Class A Common Stock to a holder of Series A Convertible Preferred Stock upon exercise by such holder of the conversion rights of a such holder in accordance with the terms hereof and such breach continues for a period of three (3) days after written notice from the holder of the Series A Convertible Preferred Stock;

(iii) the Company or any of its Affiliates shall default in the performance or compliance of any term contained in the Financing Agreement or any other Indebtedness of the Company in excess of $5,000,000, which default results in an acceleration, and such acceleration shall continue unremedied after its applicable grace or cure period;

(iv) The Company breaches any covenant or other obligation to the holders of Series A Convertible Preferred Stock contained in this Certificate of Designations or in any purchase agreement, subscription agreement or other agreement pursuant to which any holder of Series A Convertible Preferred Stock has acquired any Series A Convertible Preferred Stock, and such breach continues for a period of twenty (20) days (or, in the case of a breach of the Company's obligations in Section 19, thirty (30) days), to the extent curable, after written notice thereof to the Company from the holders of the Series A Convertible Preferred Stock;

(v) The Company or any of its Subsidiaries (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (v); or

(vi) any proceeding shall be instituted against the Company or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur.

(b) Upon the occurrence and during the continuation of any Event of Default, (i) the Preferential Coupon Rate shall immediately be increased by 10.00% per annum, and (ii) the Company shall immediately, upon the demand of the holders of the Series A Convertible Preferred Stock, redeem the issued and outstanding shares of Series A Convertible Preferred Stock at the Mandatory Redemption Price plus the Applicable Premium (if any) payable in cash.

(c) If the Company fails to complete a required mandatory redemption within 30 days of the underlying requirement or demand for such redemption and so long as such Event of Default with respect to such mandatory redemption is continuing, the Holder Majority shall have the right: (i) to immediately appoint one additional individual to the Board of Directors, (ii) to, after such Event of Default has continued for six months, appoint an additional number of individuals to the Board of Directors such that the Holder Majority has the right to appoint not less than 25% of the Directors to the Board of Directors and (iii) after such Event of Default has been continuing for a year, appoint an additional number of individuals to the Board of Directors such that the Holder Majority has the right to appoint not less than a majority of the Directors to the Board of Directors.

Section 14 Conversion Shares.

(a) The Company shall at all times reserve and keep available out of its authorized and unissued capital stock, solely for issuance upon the conversion of Series A Convertible Preferred Stock, and free from any preemptive or other similar rights, a number of shares of Class A Common Stock equal to the maximum number of shares of Class A Common Stock deliverable upon conversion of all shares of Series A Convertible Preferred Stock.

(b) All shares of Class A Common Stock delivered upon conversion of the Series A Convertible Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the holders thereof) and free of preemptive rights.

(c) Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of Series A Convertible Preferred Stock, the Company shall comply with all applicable federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(d) The Company hereby covenants and agrees that, if at any time the Class A Common Stock shall be listed on any national stock exchange or automated quotation system, the Company shall, if permitted by the rules of such exchange or automated quotation system, list and use its commercially reasonable efforts to keep listed, so long as the Class A Common Stock shall be so listed on such exchange or automated quotation system, all Class A Common Stock issuable upon conversion of the Series A Convertible Preferred Stock; provided, however, that if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Class A Common Stock until the first conversion of Series A Convertible Preferred Stock in accordance with the provisions hereof, the Company covenants to list such Class A Common Stock issuable in accordance with the requirements of such exchange or automated quotation system at such time.

Section 15 Compliance with Laws, Etc. The Company shall comply, and cause each of its Subsidiaries to comply with all applicable laws, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect (as such term is defined in the Securities Purchase Agreement).

Section 16 Publicity. All press releases or other public communications or announcements relating to the Series A Convertible Preferred Stock contemplated hereby, and the method of the release for publication thereof, shall be subject to the prior written approval of the Holder Majority and the Company, which approval shall not be unreasonably withheld, conditioned or delayed; provided that the provisions of this Section 16 shall not apply to the extent that a public announcement is required by applicable securities laws, any governmental authority or stock exchange rule; provided further, that the party making such announcement shall use commercially reasonably efforts to consult with the other parties in advance as to its form, content and timing.

Section 17 Preemptive Rights.

(a) If, after the Initial Issue Date, the Company intends to issue New Securities for cash to any Person, then, at least 15 Business Days prior to the issuance of the New Securities, the Company shall deliver to the holders of the Series A Convertible Preferred Stock an offer (the "Offer") to issue the New Securities to such holders upon the terms set forth in this Section 17; provided, however, that the Company shall have no obligation to make an Offer unless at such time such holder has record and beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of at least 50% of the aggregate of shares of Series A Convertible Preferred Stock and shares of Series A-1 Convertible Preferred Stock issued to such holder on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10).

(b) Notwithstanding the foregoing, the Company in its discretion may voluntarily provide an Offer to the holders of Series A Convertible Preferred Stock even if the foregoing conditions have not been satisfied. The Offer shall state that the Company proposes to issue the New Securities and shall specify their number and terms (including purchase price). Any Offer may contemplate market flex terms for the issuance of the New Securities. The Offer shall remain open and irrevocable for a period of 15 Business Days (the "Offer Period") from the date of its delivery.

(c) Each holder of Series A Convertible Preferred Stock shall have the right to purchase its Proportionate Portion of the New Securities on the terms and conditions set forth in the Offer by delivering written notice of acceptance thereof to the Company during the Offer Period. The closing of the purchase of New Securities by each such holder shall be held at the principal office of the Company at 11:00 a.m. local time on the closing date set forth in the Offer or at such other time and place as the parties to the transaction may agree. At such closing, the Company shall deliver the New Securities to each such holder against payment of the purchase price therefor by such holder. At such closing, all of the parties to the transaction shall execute such additional documents as are otherwise necessary or appropriate to consummate such transactions.

(d) If a holder of Series A Convertible Preferred Stock does not elect to purchase all of the New Securities pursuant to this Section 17, the Company may sell the New Securities on terms and conditions that are no more favorable in the aggregate to the applicable holder than those set forth in the Offer, provided the Company first offers such non purchased securities to the other Initial Holders of the Series A Convertible Preferred Stock as set forth in this Section 17 on a pro rata basis consistent with their Proportionate Portion, and such offer shall remain open and irrevocable for a period of 5 Business Days. If such sale is not consummated within 180 days of the date upon which the Offer is given, then no issuance of New Securities may be made thereafter by the Company without again offering the same to holders of Series A Convertible Preferred Stock in accordance with this Section 17.

Section 18 Tax Treatment. For U.S. federal and applicable state and local income tax purposes, the Company and holders of the Series A Convertible Preferred Stock shall not report on its tax returns or otherwise (including information returns) or otherwise treat (1) any Preferential Coupons or PIK Coupons that have accrued on the Series A Convertible Preferred Stock but not have been paid in cash as constructive distributions required to be included into income of any holder of Series A Convertible Preferred Stock (or its direct or indirect owners, as applicable) pursuant to Section 305(c) of the Internal Revenue Code of 1986, as amended (the "Code"), or otherwise treat such Preferential Coupons or PIK Coupons as distributions required to be included in income on a current basis or (2) the Series A Convertible Preferred Stock as having any redemption premium within the meaning of Treasury Regulations Section 1.305-5(b) (and any corresponding provision of state or local law); except in each case as required by any of the following: (w) a change in relevant law occurring after the Initial Issue Date, (x) after the Initial Issue Date, the promulgation of relevant final U.S. Treasury Regulations addressing instruments similar to the Series A Convertible Preferred Stock (from and after the effective date of such final regulations), (y) any amendment to the terms of this Certification of Designations that is made with the necessary consent of the holders of the Series A Convertible Preferred Stock or (z) a "determination" within the meaning of section 1313(a) of the Code.

Section 19 Information Rights. The Company covenants that it shall furnish each holder of Series A Convertible Preferred Stock (provided that any holder may waive the right to receive any information under this Section 19 (including any information constituting material non-public information) by providing written notice to the Company) who owns at least 50% of the aggregate of shares of Series A Convertible Preferred Stock and shares of Series A-1 Convertible Preferred Stock (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10) that it owns as of the Initial Issue Date:

(a) Within thirty (30) days after the end of each calendar month during each fiscal year of the Company, a copy of the unaudited consolidated financial statements of the Company, consisting of a consolidated balance sheet as of the close of such month and related consolidated statements of income and cash flows for such month and from the beginning of such Fiscal Year to the end of such month, prepared in accordance with generally accepted accounting principles on a consistent basis, subject to the lack of footnote disclosure and year-end adjustments;

(b) Within the then applicable time periods under the Exchange Act, a copy of the unaudited consolidated financial statements of the Company for each of the first three fiscal quarters of the Company's fiscal year, consisting of a consolidated balance sheet as of the close of such quarter and related consolidated statements of income and cash flows for such quarter and from the beginning of such fiscal year to the end of such quarter, prepared in accordance with generally accepted accounting principles on a consistent basis, subject to the lack of footnote disclosure and year-end adjustments, which will be deemed delivered if such financial statements are filed with the Securities and Exchange Commission and made available on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in full without redaction;

(c) Within the then applicable time periods under the Exchange, a copy of its annual report, audited by a nationally recognized independent, certified public accounting firm, reasonably acceptable to the Board of Managers of the Operating LLC, including consolidated balance sheet and related consolidated statements of income, cash flows and members equity of the Operating LLC and its Subsidiaries for such fiscal year, with comparative figures for the preceding fiscal year, prepared in accordance with generally accepted accounting principles on a consistent basis, which will be deemed delivered if such financial statements are filed with the Securities and Exchange Commission and made available on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in full without redaction;

(d) At least thirty (30) days prior to the end of each fiscal year, a detailed annual consolidated operating budget and cash flow schedule that has been presented for approval to, and has been approved by, the Board of Directors, prepared on a monthly and annual basis for the Company and its Subsidiaries for the succeeding fiscal year (displaying anticipated statements of income and cash flows and balance sheets (the "Annual Budget")), and promptly, upon preparation thereof, any other significant budgets which the Company or any of its Subsidiaries prepares (including any revisions of such annual or other budgets); and within thirty (30) days after any monthly period in which there is a material deviation from the Annual Budget, a statement from the Company's chief executive officer or chief financial officer explaining the deviation and the actions the Company and its Subsidiaries have taken and propose to take with respect thereto; and

(e) the Company will, within 10 Business Days (or, if after using commercially reasonable efforts to schedule such call, at such later date as agreed to by the Holder Majority) after the date of the delivery of the financial statements pursuant to Section 11(b) above, hold a conference call or teleconference, at a time selected by the Company and reasonably acceptable to the Holder Majority, to review the financial results of the previous fiscal quarter of the Company; provided that no such call will be required if each holder of Series A Convertible Preferred Stock was entitled to participate in a similar call with respect to the Financing Agreement or pursuant to the terms of any other indebtedness of the Company.

Section 20 Specific Performance. The Company and the holders of the Series A Convertible Preferred Stock agree that the holders of the Series A Convertible Preferred Stock, on the one hand, and the Company, on the other hand, would be irreparably damaged if any of the provisions of this Certificate of Designations are not performed in accordance with their specific terms by the Company, on the one hand, or the holders of the Series A Convertible Preferred Stock, on the one hand, and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the Company or any holder of the Series A Convertible Preferred Stock may be entitled, at law or in equity, the Company and such holders shall be entitled to injunctive relief to prevent breaches of the provisions of this Certificate of Designations and specifically to enforce the terms and provisions hereof.

Section 21 Corporate Opportunity; General Corporation Law. The Company waives, to the maximum extent permitted by law, the application of the doctrine of corporate opportunity, or any other analogous doctrine, and the provisions of Section 203 of the General Corporation Law, with respect to any holder of Series A Convertible Preferred Stock or any member of the Board of Directors appointed thereby (and no polices of the Board of Directors will be deemed to contravene any such waiver with respect to the holders of Series A Convertible Preferred Stock)

Section 22 Other Rights. The Series A Convertible Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in this Certificate of Designations, the Securities Purchase Agreement, the LLC Agreement, any document referred to in the foregoing, or as provided by applicable law. For avoidance of doubt, none of the rights or preferences set forth in this Certificate of Designations pursuant to Section 4, Section 6(c), Section 11, Section 12 or Section 17 shall be applicable to any use of the proceeds of the offer and sale of the Series A Convertible Preferred Stock pursuant to the Securities Purchase Agreement or in connection with any transaction contemplated by the Up-C Steps Memo (as defined in the Securities Purchase Agreement).

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by [ ], its [ ], this [ ] day of [ ], 2021.

XPONENTIAL FITNESS, INC.

By: /s/ [ ]
Name: [ ]
Title: [ ]

Exhibit A

FORM OF NOTICE OF CONVERSION

(To be Executed by the Holder
in Order to Convert 6.50% Series A Convertible Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") 6.50% Series A Convertible Preferred Stock (the "Series A Convertible Preferred Stock"), of Xponential Fitness, Inc. (hereinafter called the "Corporation") into Class A Common Stock, par value $0.01 per share, of the Corporation (the "Class A Common Stock") according to the conditions of the Certificate of Designations of Series A Convertible Preferred Stock (the "Certificate of Designations"), as of the date written below.

If Class A Common Stock is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto, if any. Each Series A Convertible Preferred Stock Certificate (or evidence of loss, theft or destruction thereof) is attached hereto.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designations.

Date of Conversion: _____

Applicable Conversion Rate: _____

Shares of Series
A Convertible Preferred Stock
to be Converted: _____

Shares of Class A
Common Stock to be Issued: _____

Signature: _____
Name: _____
Address:* _____
Fax No.: _____

* Address where Class A Common Stock and any other payments or certificates shall be sent by the Corporation.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of 6.50% Series A Convertible Preferred Stock evidenced hereby to:

(Insert assignee's social security or taxpayer identification number, if any)

(Insert address and zip code of assignee)

and irrevocably appoints:

as agent to transfer the shares of 6.50% Series A Convertible Preferred Stock evidenced hereby on the books of the Transfer Agent.

The agent may substitute another to act for him or her.

Date:

Signature: _____

(Sign exactly as your name in which your shares of Series A Convertible Preferred Stock are registered)

Signature Guarantee: _____

(Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

CERTIFICATE OF DESIGNATIONS
OF
6.50% SERIES A-1 CONVERTIBLE PREFERRED STOCK
OF
XPONENTIAL FITNESS, INC.

Xponential Fitness, Inc., a Delaware corporation (the "Company"), hereby certifies that, pursuant to the provisions of Sections 103, 141 and 151 of the General Corporation Law of the State of Delaware, (a) on [ ], 2021, the board of directors of the Company (the "Board of Directors"), pursuant to authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the Company (as such may be amended, modified or restated from time to time, in each case to the extent not prohibited by Section 6(b) of this Certificate of Designations, the "Charter"), adopted the resolution set forth immediately below, which resolution is now, and at all times since its date of adoption has been, in full force and effect:

RESOLVED, that pursuant to the express authorization provided to the Board of Directors to provide, out of the unissued shares of preferred stock, for one or more series of preferred stock and, with respect to each such series, to fix, without further stockholder approval, the designation, powers, preferences and relative, participating, optional or other special rights, including voting powers and rights, and the qualifications, limitations or restrictions thereof, a series of preferred stock be, and hereby is, created and designated 6.50% Series A-1 Convertible Preferred Stock, and that the designation and number of shares of such series, and the voting powers, designations, preferences and rights, and qualifications, limitations or restrictions thereof, are as set forth in this certificate of designations, as it may be amended, modified or restated from time to time (the "Certificate of Designations") as follows:

Section 1 Designation and Number of Shares. Pursuant to the Charter, there is hereby created out of the authorized and unissued shares of preferred stock of the Company, par value $0.0001 per share ("Preferred Stock"), a series of Preferred Stock initially consisting of [ ] shares of Preferred Stock designated as the "6.50% Series A-1 Convertible Preferred Stock" (the 'Series A-1 Convertible Preferred Stock"). Such number of shares may be increased or decreased by resolution of the Board of Directors or any duly authorized committee thereof, subject to the terms and conditions hereof and the requirements of applicable law; provided that (i) no increase shall cause the number of authorized shares of Series A-1 Convertible Preferred Stock to exceed the total number of authorized shares of Preferred Stock and (ii) no decrease shall reduce the number of shares of Series A-1 Convertible Preferred Stock to a number less than the number of such shares then outstanding.

Section 2 General Matters; Ranking. Each share of Series A-1 Convertible Preferred Stock shall be identical in all respects to every other share of Series A-1 Convertible Preferred Stock. The Series A-1 Convertible Preferred Stock, with respect to distributions, including upon the redemption, liquidation, winding-up or dissolution, as applicable, of the Company, shall rank (i) senior to each class or series of Junior Securities, (ii) on parity with each class or series of Parity Securities (if any), (iii) junior to each class or series of Senior Securities (if any) and (iv) junior to the Company's existing and future indebtedness and other liabilities.

Section 3 Definitions. As used herein with respect to the SeriesA-1 Convertible Preferred Stock:

(a) "Affiliate" means, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls (alone or through an affiliated group), is controlled by, or is under common control with, such specified Person, including any investment vehicle under common management of such Person, (b) any Person that is an officer, director, manager, member, partner, or trustee of, or serves in a similar capacity with respect to, such specified Person (or an Affiliate of such Person) or of which such specified Person is an officer, director, member, manager, partner or trustee, or with respect to which such Person serves in a similar capacity or (c) any Person who is a Family Member of such specified Person; provided that the holders of the Series A-1 Convertible Preferred Stock as of the Initial Issue Date will not be Affiliates of the Company.

(b) "Applicable Premium" means (i) with respect to a redemption or liquidation occurring on or prior to the fifth anniversary of the Initial Issue Date, the sum of (1) all required and unpaid Preferential Coupons due on the Series A-1 Convertible Preferred Stock payable at the Preferential Coupon Rate from the applicable date of redemption through the date that is five (5) years after the Initial Issue Date plus (2) 5.0% of the Fixed Liquidation Preference of the Series A-1 Convertible Preferred Stock being so redeemed and (ii) with respect to a redemption or liquidation occurring after the fifth anniversary of the Initial Issue Date, but on or prior to the sixth anniversary of the Initial Issue Date, 5.0% of the Fixed Liquidation Preference.

(c) "Average VWAP" per share over a certain period means the arithmetic average of the VWAP per share for each Trading Day in the relevant period.

(d) "Business Day" means any day other than a Saturday, Sunday or other day that banks are not authorized to be open for business in the State of California.

(e) "Class A Common Stock" means the Class A Common Stock of the Company, par value $0.0001 per share.

(f) "Class B Common Stock" means the Class B Common Stock of the Company, par value $0.0001 per share.

(g) "Common Stock" means, collectively, the Class A Common Stock and the Class B Common Stock.

(h) "Conversion Rate" per share of Series A-1 Convertible Preferred Stock means [ ] shares of Class A Common Stock, which amount is subject to adjustment as set forth herein. Whenever this Certificate of Designations refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference shall be deemed to be the Conversion Rate as of the close of business on such date.

(i) "Conversion Price" means, at any time, for each share of SeriesA-1 Convertible Preferred Stock, a dollar amount equal to $1,000*divided by* the then-applicable Conversion Rate, which, for the avoidance of doubt, shall initially be $[ ].

(j) "Convertible Securities" means any security convertible into or exchangeable for Class A Common Stock.

(k) "Coupon Payment Date" means March 31, June 30, September 30 and December 31 of each year, commencing on [September 30, 2021].

(l) "Coupon Period" means the period from, and including, a Coupon Payment Date to, but excluding, the next Coupon Payment Date, except that the initial Coupon Period shall commence on, and include, the Initial Issue Date and shall end on, and exclude, the first Coupon Payment Date.

(m) "Effective Price" has the following meaning with respect to the issuance or sale of any shares of Class A Common Stock or any Equity-Linked Securities:

A. in the case of the issuance or sale of shares of Class A Common Stock, the value of the consideration received by the Company for such shares, expressed as an amount per share of Class A Common Stock; and

B. in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose (1) numerator is equal to the sum, without duplication, of (x) the value of the aggregate consideration received by the Company for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Class A Common Stock pursuant to such Equity-Linked Securities; and (2) denominator is equal to the maximum number of shares of Class A Common Stock underlying such Equity-Linked Securities;

provided, *however*, that:

(x) for purposes of clause (B) above, if such minimum aggregate consideration, or such maximum number of shares of Class A Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (1) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Class A Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (2) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (including pursuant to "anti-dilution" or similar provisions), there will be deemed to occur, for purposes of Section 11(g) and without affecting any prior adjustments theretofore made to the Conversion Rate, an issuance of additional Equity-Linked Securities;

(y) for purposes of clause (B) above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Class A Common Stock pursuant to such Equity-Linked Securities; and

(z) the "value" of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

(n) "Effective Date" means, in the case of Class A Common Stock, the first date on which the shares of Class A Common Stock trade on the Relevant Stock Exchange, regular way, reflecting the relevant share split or share combination, as applicable.

(o) "Equity-Linked Securities" means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Class A Common Stock.

(p) "Ex-Date" means the first date on which the shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(q) "Family Member" means, with respect to any Person, such Person's spouse or lineal descendants (whether natural or adopted).

(r) "Fixed Liquidation Preference" means, as to shares of Series A-1 Convertible Preferred Stock, initially $1,000 per share, subject to adjustment as set forth in Section 4, including, for the avoidance of doubt, any PIK Coupons.

(s) "Holder Majority" means, holders of record of a majority of the outstanding shares of Preferred Stock, voting together as a single class, provided that such majority must include the MSD Investor so long as the MSD Investor or its Permitted Transferees holds, collectively, not less than 50% of the number of shares of Series A-1 Convertible Preferred Stock or Series A Convertible Preferred Stock issued to it on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10).

(t) "Indebtedness" shall have the meaning given to it under the Financing Agreement as in effect on the date hereof.

(u) "Initial Holder" means, as to a share of Preferred Stock, the Person to which such share was issued and sold pursuant to the Securities Purchase Agreement.

(v) "Initial Issue Date" means the first original issue date of either shares of the Series A Convertible Preferred Stock or shares of the Series A-1 Convertible Preferred Stock.

(w) "Junior Securities" means (i) the Common Stock and (ii) each other class or series of capital stock of the Company established after the Initial Issue Date, the terms of which do not expressly provide that such class or series ranks (x) senior to the Series A-1 Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, winding-up or dissolution or (y) on parity with the Series A-1 Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, winding-up or dissolution.

(x) "Last Reported Sale Price" for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Class A Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Class A Common Stock is then listed. If the Class A Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Class A Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Class A Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Class A Common Stock on such Trading Day from each of at least three (3) nationally recognized independent investment banking firms selected by the Company.

(y) "Liquidity Conditions" will be satisfied with respect to a Mandatory Conversion if (A) either (1) each share of Class A Common Stock to be issued upon such Mandatory Conversion of any Series A-1 Convertible Preferred Stock would be eligible to be offered, sold or otherwise transferred by the holder of such Series A-1 Convertible Preferred Stock pursuant to Rule 144 under the Securities Act of 1933, as amended (the 'Securities Act") (or any successor rule thereto), without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice; or (2) the offer and sale of such share of Class A Common Stock by such holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable, by such holder to sell such share of Class A Common Stock, continuously during the period from, and including, the date the related Mandatory Conversion Notice is sent to, and including, the forty fifth (45th) Trading Day after the date such share of Class A Common Stock is issued; and (ii) the offer, sale or other transfer of such share of Class A Common Stock by such holder would not be subject to any registration or notice requirement under any U.S. State securities or "blue sky" laws (other than those that have been fully satisfied or complied with); (B) each share of Class A Common Stock referred to in clause (A) above (i) will, when issued or sold pursuant to the effective registration statement referred to above, be admitted for book-entry settlement through The Depository Trust Company; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on a nationally recognized stock exchange; and (C) the average public float for the Class A Common Stock over the most recent 30 consecutive Trading Day period exceeds $400.0 million and the average daily trading volume for the Class A Common Stock for 20 Trading Days in a 30 consecutive Trading Day period ending on the date of such mandatory conversion exceeds $8.0 million per day, in each case as displayed by Bloomberg (or its equivalent successor).

(z) "LLC Agreement" means the Limited Liability Company Operating Agreement of the Operating LLC, dated as of [ ], 2021.

(aa) "LLC Units" means the common limited liability interest of the Operating LLC.

(bb) "Market Disruption Event" means (i) a failure by the Relevant Stock Exchange to open for trading during its regular trading session; or (ii) the occurrence or existence, prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Class A Common Stock, for more than a one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Relevant Stock Exchange or otherwise) in the Class A Common Stock.

(cc) "MSD Investor" means any holders of the Series A-1 Convertible Preferred Stock that are Affiliates of MSD Partners, L.P. or MSD Capital, L.P.

(dd) "New Securities" means all Class A Common Stock, Convertible Securities, and Equity-Linked Securities, other than: (A) issuances pursuant to Section 11(j); (B) shares of any class of capital stock of the Company issued on a pro rata basis to all holders of such class as a stock dividend or upon any stock split or other subdivision of shares of capital stock; (C) shares of capital stock of the Company issued as consideration in connection with an acquisition by the Company, approved by the Board of Directors, of assets or capital stock of any Person; (D) shares of Class A Common Stock, Convertible Securities and Options issued to officers, directors, employees or consultants of the Company pursuant to any equity incentive plan adopted or approved by the Board of Directors from time to time, including any shares of Class A Common Stock issuable upon exercise of any such Option or settlement or vesting of any award issued under such plans, (E) rights issued pursuant to a shareholder rights plan, (F) the Company's issuance of securities pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by a majority of the disinterested members of the Board of Directors and (G) issuances of securities by the Company in an underwritten public offering under the Securities Act or pursuant to a customary marketed Rule 144A offering under the Securities Act (or any successor rule thereto), including any related capped call, call spread or similar derivative security issued in connection therewith.

(ee) "Operating LLC" means Xponential Intermediate Holdings LLC.

(ff) "Options" means any options, warrants or other rights to subscribe for or to purchase, or any options for the purchase of, any Class A Common Stock or Convertible Securities.

(gg) "Ownership Threshold" means (i) the Initial Holders beneficially own (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 50% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to such holder on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10); and (ii) (x) with respect to Section 6(b)(viii), the MSD Investor beneficially owns (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 50% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to the MSD Investor on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10), or (y) with respect to Section 6(b)(v), MSD Investor beneficially owns (in any mix of Series A Convertible Preferred Stock and/or Series A-1 Convertible Preferred Stock) at least 20% of the shares of Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock in the aggregate issued to the MSD Investor on the Initial Issue Date, as applicable; provided that Transfers of any shares of Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock during the occurrence and continuance of an Event of Default shall be disregarded for purposes of calculating the Ownership Threshold.

(hh) "Parity Securities" means any class or series of capital stock of the Company established after the Initial Issue Date, the terms of which expressly provide that such class or series shall rank on parity with the Series A-1 Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, redemption, winding-up or dissolution.

(ii) "Permitted Party" means any Person that is an Affiliate of Mark Grabowski or Anthony Geisler.

(jj) "Permitted Transfer" means any one of the following (i) any Transfer by a holder of Preferred Stock of all or any part of his, her or its shares of Preferred Stock as a gift into trust established by said holder (or an Affiliate thereof) for the benefit of himself, herself and/or a Family Member of such holder (or an Affiliate thereof) and from which such shares, pursuant to the express terms of the governing instrument of such trust, cannot be distributed other than to said holder or an Affiliate thereof during said holder's (or its Affiliate's) lifetime and such holder (or an Affiliate thereof) retains voting control of said shares during said holder's (or its Affiliate's) lifetime; (ii) upon termination of a trust, custodianship, guardianship or similar arrangement, the beneficiary of which is either a holder or a Family Member, a Transfer by the trustee, custodian, guardian or other fiduciary to the Person or Persons who, in accordance with the provisions of said trust, custodianship, guardianship or similar arrangement, are entitled to receive the shares held therein; (iii) with respect to a holder that is a corporation, partnership or limited liability company, a Transfer of all or a portion of such holder's shares to the members of such corporation, partners of such partnership or the members of such limited liability company in connection with the liquidation or dissolution of such corporation, partnership or limited liability company; or (iv) Transfers between Persons meeting the definition of the MSD Investor, Transfers to an Affiliate, or Transfers of interests in any of the foregoing.

(kk) "Permitted Transferee" means a transferee of any security of the Company in a Permitted Transfer.

(ll) "Person" means any individual, sole proprietorship, general partnership, limited partnership, corporation, business trust, trust, joint venture, limited liability company, association, joint stock company, bank, unincorporated organization or any other form of entity.

(mm) "PIK Rate" means the Preferential Coupon Rate plus 1.00%.

(nn) "Preferential Coupon Rate" shall mean a rate per annum of 6.50% of the Fixed Liquidation Preference per share of Series A-1 Convertible Preferred Stock.

(oo) "Proportionate Portion" means the portion of the New Securities available for purchase by a holder of Series A-1 Convertible Preferred Stock, which shall be determined by (a) multiplying the total New Securities available for purchase by (b) a fraction, the numerator of which is the sum of the number of shares of Class A Common Stock underlying the Series A-1 Convertible Preferred Stock held by such holders, and the denominator of which is the sum of: (i) the total number of shares of Class A Common Stock outstanding, (ii) the number of shares of Class A Common Stock issuable upon exchange of then outstanding LLC Units and (iii) the number of shares of Class A Common Stock underlying the outstanding Preferred Stock, in each case as of the applicable date.

(pp) "Record Date" means, with respect to any dividend, distribution or other transaction or event in which the holders of the applicable security have the right to receive any cash, securities or other property or in which such security is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of such security entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

(qq) "Record Holder" means, with respect to any Coupon Payment Date, a holder of record of the shares of SeriesA-1 Convertible Preferred Stock as such holder appears on the stock register of the Company at the close of business on the related Regular Record Date.

(rr) "Regular Record Date" means, with respect to any Coupon Payment Date, the March 15, June 15, September 15 and December 15, as the case may be, immediately preceding the relevant Coupon Payment Date. These Regular Record Dates shall apply regardless of whether a particular Regular Record Date is a Business Day.

(ss) "Relevant Stock Exchange" means the principal U.S. national or regional securities exchange on which the Class A Common Stock is then listed or, if the Class A Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Class A Common Stock is then listed or admitted for trading.

(tt) "Sale of the Company" means (i) a sale or transfer of all or substantially all of the assets of the Company or any of its Subsidiaries, on a consolidated basis, in any transaction or series of related transactions, (ii) any merger, consolidation or reorganization to which the Company or any of its Subsidiaries are parties, except for a merger, consolidation or reorganization in which, after giving effect to such merger, consolidation or reorganization, the holders of the Company's or such Subsidiary, as the case may be, outstanding equity securities (on a fully-diluted basis) immediately prior to the merger, consolidation or reorganization will own directly or indirectly, immediately following the merger, consolidation or reorganization, equity securities holding a majority of the voting power of the Company or such Subsidiary, as the case may be, in substantially the same proportions vis-à-vis each other as immediately before such transaction, (iii) other than pursuant to Permitted Transfer(s) or in connection with the conversion or exchange of LLC Units pursuant to the LLC Agreement, any sale, transfer or issuance or series of sales, transfers and/or issuances of the equity securities of the Company or any of its Subsidiaries which results in any person, other than a Permitted Party or the holders of the Preferred Stock owning at least twenty percent (20%) of the equity securities of the Company or such Subsidiary, as the case may be, or (iv) the Class A Common Stock ceases to be listed on a nationally recognized stock exchange.

(uu) "Scheduled Trading Day" means any day that is scheduled to be a Trading Day.

(vv) "Securities Purchase Agreement" means that certain Securities Purchase Agreement dated June 25, 2021, by and among the purchasers listed on Exhibit A thereto and the Company.

(ww) "Senior Securities" means each class or series of capital stock of the Company established after the Initial Issue Date, the terms of which expressly provide that such class or series shall rank senior to the Series A-1 Convertible Preferred Stock as to distribution rights, including upon the Company's liquidation, redemption, winding-up or dissolution.

(xx) "Spin-Off" means a payment of a dividend or other distribution on the Class A Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange.

(yy) "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof 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, or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interests thereof entitled to control the board of managers, general partner or similar governing body of such entity is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any manager, managing director or general partner of such limited liability company, partnership, association or other business entity.

(zz) "Tax Receivable Agreement" means the Tax Receivable Agreement, dated as of [ ], 2021, by and among the Company and the other parties thereto.

(aaa) "Total Leverage Ratio" has the meaning set forth in the Financing Agreement, dated April 19, 2021, with Wilmington Trust, National Association, as administrative agent and collateral agent, and the lenders party thereto, (the "Financing Agreement"), as in effect on the date of this Certificate of Designations (including the related defined terms contained therein), as modified to: (i) include all Indebtedness of the Company and its Subsidiaries in the numerator and (ii) not allow for the netting of the cash proceeds of any Indebtedness incurred in connection with the calculation of such Total Leverage Ratio that is applied to the balance sheet of the Company or any of its Subsidiaries or for working capital, as applicable (for example, the Company could not borrow $100.0 million, leaving $100.0 million on its balance sheet as a means of circumventing the Total Leverage Ratio incurrence test; however, for avoidance of doubt, in this example cash not raised from the $100.0 million debt incurrence will be netted for purposes of the Total Leverage Ratio); provided that such definition shall exclude cash adjustments for franchise sales; provided, further, it shall be agreed that Consolidated EBITDA for the twelve months ended March 30, 2021 (after giving effect to the exclusion of such cash adjustments for franchise sales) for the purposes of calculating the Total Leverage Ratio for such period is $15,877,257.

(bbb) "Trading Day" means a day on which (i) there is no Market Disruption Event and (ii) trading in the Class A Common Stock generally occurs on the Relevant Stock Exchange; provided that if the Class A Common Stock is not listed or admitted for trading, "Trading Day" means any Business Day.

(ccc) "Transfer" means, as a noun, any voluntary or involuntary transfer, sale, assignment, pledge, hypothecation, the discretionary or obligatory distribution from a trust, or other disposition or encumbrance and, as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate, distribute from a trust or otherwise dispose of or encumber any shares of Series A-1 Convertible Preferred Stock (or any rights, obligations or interests therein or held thereby), including, without limitation, the distribution of any shares of Series A-1 Convertible Preferred Stock by a Person that is a legal entity to its shareholders, members, partners or other beneficiaries upon such Person's liquidation or dissolution, by means of a dividend or otherwise. Transfer shall include, without limitation, all Transfers, whether directly or indirectly (including, with respect to any stockholder that is not a natural person, by virtue of any direct or indirect transfer or equity interests in such stockholder or of any redemption or issuance of equity interests).

(ddd) "VWAP" per share of Class A Common Stock on any Trading Day means the per share volume-weighted average price as displayed by Bloomberg (or its equivalent successor) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is not available, the market value per share of Class A Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose at the Company's sole expense).

Section 4 Preferential Coupons.

(a) Rate. Subject to the rights of holders of any class or series of Senior Securities, a preferential cumulative return on the Fixed Liquidation Preference of the Series A-1 Convertible Preferred Stock (the "Preferential Coupons") shall accumulate daily in arrears, whether or not earned or declared by the Board of Directors, at the Preferential Coupon Rate.

Preferential Coupons shall be payable in cash (other than a PIK Coupon, as described below) quarterly on each Coupon Payment Date at such annual rate, and shall accumulate from the most recent date as to which Preferential Coupons shall have been paid or, if no dividends have been paid, from the Initial Issue Date, whether or not in any Coupon Period or Coupon Periods there have been funds legally available.

Preferential Coupons shall be payable when, as and if declared by the Board of Directors on the relevant Coupon Payment Date to Record Holders on the immediately preceding Regular Record Date, to the extent that such Series A-1 Convertible Preferred Stock remains outstanding on the applicable Coupon Payment Date; provided that the Regular Record Date for any such Preferential Coupon shall not precede the date on which such dividend was so declared. If a Coupon Payment Date is not a Business Day, payment shall be made on the next succeeding Business Day, without any interest or other payment in lieu of interest accruing with respect to this delay.

The amount of Preferential Coupons payable on each share of Series A-1 Convertible Preferred Stock for each Coupon Period shall be computed based upon the actual number of days elapsed during such period over a 360-day year (consisting of twelve 30-day months).

In the event that the Company does not declare and pay any Preferential Coupons in cash as described above, the Fixed Liquidation Preference of the Series A-1 Convertible Preferred Stock shall automatically increase at the PIK Rate, on a compounding basis, on such Coupon Payment Date (the "PIK Coupon" and, together with the Preferential Coupon, the "Preferred Coupons"); provided that the Company shall provide written notice to the holders of Series A-1 Convertible Preferred Stock of such PIK Coupon at least 5 days prior to the Coupon Payment Date immediately preceding the applicable Coupon Payment Date. Thereafter, the Preferential Coupons shall accrue and be payable on such increased Fixed Liquidation Preference and such increased Fixed Liquidation Preference shall be Fixed Liquidation Preference with respect to such Series A-1 Convertible Preferred Stock for all purposes hereunder.

No distributions shall be made on any Junior Securities of the Company unless and until all Preferred Coupons (including any PIK Coupon) for all preceding Coupon Periods have been paid in full in cash for all outstanding shares of Series A-1 Convertible Preferred Stock in accordance with the succeeding Section 4(b).

Notwithstanding anything to the contrary contained herein, any PIK Coupon (1) shall be treated as an accrued but unpaid dividend of the Series A-1 Convertible Preferred Stock that compounds, whether or not declared by the Board of Directors, and (2) shall not be declared as a dividend by the Board of Directors (A) unless and until such PIK Coupon is paid to the holders of the Series A-1 Convertible Preferred Stock immediately in cash (it being understood that no dividends may be declared and paid in securities or otherwise "in kind") or (B) in anticipation of a redemption of the Series A-1 Convertible Preferred Stock or any liquidation of the Company.

(b) Priority of Coupons. So long as any shares of Series A-1 Convertible Preferred Stock remain outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other class or series of Junior Securities, and no Common Stock or any other class or series of Junior Securities shall be purchased, redeemed or otherwise acquired for consideration by the Company or any of its Subsidiaries, unless, in each case, (x) (1) after giving pro forma effect to any such dividend or distribution, purchase, redemption or other acquisition, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of a non-cash distribution, the fair market value of such distribution, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such dividend or distribution, purchase, redemption or other acquisition, as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing, (y) in the case of any such dividend or distribution where, if holders of the Series A-1 Convertible Preferred Stock participated in such dividend or distribution on an as-converted basis, such holders would receive an amount that exceeds the amount payable per annum in cash at the Preferential Coupon Rate, an amount equal to such excess dividend or distribution is declared and paid, respectively, on the Series A-1 Convertible Preferred Stock (such a dividend or distribution on the Series A-1 Convertible Preferred Stock, a "Participating Dividend," and such corresponding dividend or distribution on the Common Stock, the "Junior Participating Dividend"), such that (1) the Record Date and the payment date for such Participating Dividend occur on the same dates as the Record Date and payment date, respectively, for such Junior Participating Dividend; and (2) the kind and amount of consideration payable per share of Series A-1 Convertible Preferred Stock in such Participating Dividend is the same kind and amount of consideration that would be payable in the Junior Participating Dividend in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with Section 9 in respect of one (1) share of Series A-1 Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date, after deducting the amount payable at the Preferential Coupon Rate in cash per annum, and (z) all accumulated and unpaid Preferred Coupons (including any PIK Coupons) for all preceding Coupon Periods and the then current Coupon Period have been and will be paid in full in cash, on all outstanding shares of Series A-1 Convertible Preferred Stock. The foregoing limitation shall not apply to:

(i) any dividend or distribution payable in shares of Common Stock or other Junior Securities, together with cash in lieu of any fractional share;

(ii) purchases, redemptions or other acquisitions of Common Stock or other Junior Securities in connection with the administration of any benefit or other incentive plan, including any employment contract, in the ordinary course of business, including, without limitation, (x) the forfeiture of unvested shares of restricted stock or share withholding or other acquisitions or surrender of shares to which the holder may otherwise be entitled upon exercise, delivery or vesting of equity awards (whether in payment of applicable taxes, the exercise price or otherwise) and (y) the payment of cash in lieu of fractional shares, provided that (1) after giving pro forma effect to any such purchase, redemption or other acquisition, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of non-cash consideration, the fair market value of such consideration, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such purchase, redemption or other acquisition, as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing;

(iii) purchases or deemed purchases or acquisitions of fractional interests in shares of Common Stock or other Junior Securities pursuant to the conversion or exchange provisions of such shares of Junior Securities or any securities exchangeable for or convertible into shares of Common Stock or other Junior Securities;

(iv) any dividends or distributions of rights or Common Stock or other Junior Securities in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan;

(v) any other purchases, other than purchases from a Permitted Party, of Common Stock or other Junior Securities, including under a stock repurchase plan; provided that (1) after giving pro forma effect to any such purchase, the Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x on a pro forma basis, (2) the Company's Market Capitalization, minus the amount (or, in the case of non-cash consideration, the fair market value of such consideration, as determined by the Board of Directors in good faith, in consultation with the Series A Director) of such purchase as of such date equals or exceeds the Equity Cushion and (3) no Event of Default shall have occurred and be continuing;

(vi) the exchange or conversion of Junior Securities for or into other Junior Securities or of Parity Securities for or into other Parity Securities (with the same or lesser aggregate liquidation preference) or Junior Securities and, in each case, the payment of cash in lieu of fractional shares.

When Preferential Coupons (i) have not been declared and paid in full in cash on any Coupon Payment Date (including PIK Coupon), or (ii) have been declared but have not been paid in full in cash on any Coupon Payment Date (including PIK Coupon), no dividends may be declared or paid on any shares of Parity Securities (the issuance of which is subject to the consent of the holders of the Series A-1 Convertible Preferred Stock as set forth herein) unless all prior Preferential Coupon (including PIK Coupon) are paid in full in cash on the Series A-1 Convertible Preferred Stock. Thereafter, if declared by the Board of Directors, dividends shall be declared on the Series A-1 Convertible Preferred Stock such that the respective amounts in cash of such dividends declared on the Series A-1 Convertible Preferred Stock and such shares of Parity Securities (the issuance of which is subject to the consent of the Preferred Members as set forth herein) shall be allocated pro rata among the holders of the Series A-1 Convertible Preferred Stock and the holders of any shares of Parity Securities then outstanding.

Subject to the foregoing, and not otherwise, such dividends as may be determined by the Board of Directors or the board of managers of the Operating LLC (in the case of LLC Units), or an authorized committee thereof, may be declared and paid (payable in cash, securities or other property) on any securities, including LLC Units and other Junior Securities, from time to time out of any funds legally available for such payment, and holders of Series A-1 Convertible Preferred Stock shall not be entitled to participate in any such dividends other than as provided in this Certificate of Designations.

Section 5 Liquidation, Dissolution or Winding Up.

(a) In the event of any voluntary or involuntary liquidation, winding-up or dissolution of the Company, each holder of Series A-1 Convertible Preferred Stock shall be entitled to receive, per share of Series A-1 Convertible Preferred Stock, the greater of (x) the Fixed Liquidation Preference per share of the Series A-1 Convertible Preferred Stock plus the Applicable Premium (if any) and (y) the amount such holder would be entitled to receive on an as-converted basis if such holder elected to convert its Series A-1 Convertible Preferred Stock on the date of such liquidation, winding-up or dissolution pursuant to Section 9 (such greater amount, the "Liquidation Preference"), plus an amount (the "Liquidation Coupon Amount") equal to the accumulated and unpaid Preferential Coupons on such share of Series A-1 Convertible Preferred Stock since the most recent Coupon Payment Date, to, but excluding, the date fixed for liquidation, winding-up or dissolution to be paid out of the assets of the Company legally available for distribution to its stockholders, after satisfaction of debt and other liabilities owed to the Company's creditors and holders of shares of any Senior Securities and before any payment or distribution is made to holders of any Junior Securities, including, without limitation, Common Stock.

(b) If, upon the voluntary or involuntary liquidation, winding-up or dissolution of the Company, the amounts payable with respect to (A) the Liquidation Preference plus the Liquidation Coupon Amount on the Series A-1 Convertible Preferred Stock and (B) the liquidation preference of, and the amount of accumulated and unpaid dividends to, but excluding, the date fixed for liquidation, dissolution or winding up, on all Parity Securities, if applicable, are not paid in full, the holders of the Series A-1 Convertible Preferred Stock and all holders of any such Parity Securities shall share equally and ratably in any distribution of the Company's assets in proportion to their respective liquidation preferences and amounts equal to the accumulated and unpaid dividends to which they are entitled.

(c) After the payment to any holder of Series A-1 Convertible Preferred Stock of the full amount of the Liquidation Preference and the Liquidation Coupon Amount for such holder's Series A-1 Convertible Preferred Stock, such holder shall have no right or claim to any of the remaining assets of the Company.

(d) Neither the sale, lease nor exchange of all or substantially all of Company's assets or business (other than in connection with the liquidation, winding-up or dissolution of the Company), nor its merger or consolidation into or with any other Person, shall be deemed to be the voluntary or involuntary liquidation, winding-up or dissolution of the Company.

Section 6 Voting Powers.

(a) Voting. The holders of Series A-1 Convertible Preferred Stock shall have no voting rights except as set forth below in Section 6(b), other than with respect to any shares of Class A Common Stock received upon conversion.

(b) Consent Rights. So long as any shares of Series A-1 Convertible Preferred Stock are outstanding, the Company shall not, and shall cause its Subsidiaries not to, without the affirmative vote or consent of the Holder Majority, given in person or by proxy, either in writing without a meeting or by vote at an annual or special meeting of such holders:

(i) amend or alter the provisions of the Charter or bylaws of the Company or the LLC Agreement (or certificate of formation of the Operating LLC), or equivalent organizational documents, so as to authorize or create, or increase the authorized number of, any class or series of Senior Securities or Parity Securities;

(ii) amend, alter or repeal the provisions of the Charter or bylaws of the Company or the LLC Agreement (or certificate of formation of the Operating LLC), or equivalent organizational documents, so as to adversely affect the special rights, preferences or voting powers of the shares of Series A-1 Convertible Preferred Stock or impose any additional obligations on the holders of the Series A-1 Convertible Preferred Stock;

(iii) issue any Parity Securities or Senior Securities or any securities convertible into, exercisable for or exchangeable into Parity Securities or Senior Securities, other than any shares of Series A-1 Convertible Preferred Stock in exchange for shares of Series A Convertible Preferred Stock (or vice versa) pursuant to Section 10;

(iv) make any dividends or distributions, or purchase, redeem or otherwise acquire any shares of capital stock or any securities convertible into, exercisable for or exchangeable into capital stock, except as permitted under Section 4(b), or cause any Spin-Off to occur;

(v) So long as the Ownership Threshold has been met, (1) with respect to the Company and its Subsidiaries (other than the Operating LLC and its Subsidiaries), incur any Indebtedness or other liabilities except those liabilities incidental to issuances of equity securities and other customary activities of an "Up-C Issuer" or (2) other than under any capital leases or in accordance with the Securities Purchase Agreement, incur any Indebtedness or create any lien or security interest in any assets in connection with Indebtedness (other than in a comparable refinancings on customary then-market terms, in an amount not to exceed the principal amount being refinanced, plus customary premiums and transaction costs, which may not be more restrictive with respect to distributions on and conversions and repurchases or redemptions of the Series A-1 Convertible Preferred Stock than such provisions contained in the Financing Agreement as in effect on the date hereof); provided that Subsidiaries of the Company (and, if the Company owns 100% of the equity interests in the Operating LLC, the Company) may incur Indebtedness (which may not be more restrictive with respect to distributions on and conversions and repurchases or redemptions of the Series A-1 Convertible Preferred Stock than such provisions contained in the Financing Agreement as in effect on the date hereof) if, on the date of incurrence of such Indebtedness (and after giving pro forma effect to any Indebtedness that would be incurred or assumed in connection with such action), (1) the Total Leverage Ratio of the Company and its consolidated Affiliates would

not exceed 6.5x on a pro forma basis for such incurrence and the use of proceeds thereof, (2) the Company's market capitalization (based on the Last Reported Sales Price of the Class A Common Stock for any 20 Trading Days in a 30 consecutive Trading Day period ending on the date of such incurrence and, for the avoidance of doubt, excluding any preferred stock or shares of Class A Common Stock underlying any preferred stock or any other Parity Securities or Senior Securities) (the "Market Capitalization") equals or exceeds $500 million (the "Equity Cushion") and (3) no Event of Default has occurred and is continuing (other than an Event of Default with respect to Section 19);

(vi) create or incur additional layers of Indebtedness or preferred equity after the Initial Issue Date, excluding, in the case of the Operating LLC and its Subsidiaries, Indebtedness existing as of the Initial Issue Date (including any refinancing thereof), other than any ordinary course liabilities, intercompany Indebtedness, purchase money and capital lease obligations, sale and leaseback obligations, earn-out obligations, and other deferred purchase price obligations;

(vii) (1) enter into any transactions with an Affiliate,provided that the Company and its Affiliates are permitted to enter into or engage in (i) transactions among the Company, its consolidated Affiliates and its and their respective Subsidiaries; (ii) compensation arrangements (including equity-based compensation) and arrangements for the reimbursement of expenses of, in each case, employees, officers and consultants; provided that, for executive officers and directors, such arrangement are approved by the compensation committee (or its equivalent) on the Board of Directors, (iii) transactions pursuant to agreements in effect as of the Initial Issuance Date, and (iv) other transactions which are entered into in the ordinary course of business on terms and conditions substantially as favorable to the Company as would be obtainable by it in a comparable arm's length transaction with a Person other than an Affiliate and which is approved by a majority of the members of the Board of Directors that are disinterested in the transaction or (2) make any payment under the Tax Receivable Agreement payable upon a Sale of the Company, "Change of Control" or similar term, unless the Mandatory Redemption Price has been paid in full in connection with such transaction;

(viii) So long as the Ownership Threshold has been met, sell or dispose of any assets in a transaction or series of related transactions unless (1) the pro forma Total Leverage Ratio of the Company and its consolidated Affiliates would not exceed 6.5x, (2) the Company's Market Capitalization equals or exceeds the Equity Cushion on a pro forma basis, (3) no Event of Default has occurred and is continuing, and (4) such sale or disposition is for fair market value (as determined by the Board of Directors in good faith), in each case except for dispositions in an annual amount not exceeding $40,000,000; or

(ix) with respect to the Company, consolidate, amalgamate or merge with or into any other entity unless (i) such entity is the continuing entity (in the case of a merger or amalgamation), or (ii) if the Company is not the continuing entity, the successor entity is organized and existing under the laws of the United States of America or any state thereof, the District of Columbia or any territory thereof, and, in each case such successor entity expressly assumes, by binding agreement, all obligations with respect to the Series A-1 Convertible Preferred Stock, and, in each case (x) the SeriesA-1 Convertible Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity (or the Series A-1 Convertible Preferred Stock are otherwise exchanged or reclassified), are

converted or reclassified into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent or the right to receive such securities; and (y) the Series A-1 Convertible Preferred Stock that remain outstanding or such shares of preference securities, as the case may be, have such rights, preferences and voting powers that, taken as a whole, are not less favorable to the holders thereof than the rights, preferences and voting powers of the Series A-1 Convertible Preferred Stock immediately prior to the consummation of such transaction, and the holders of the SeriesA-1 Convertible Preferred Stock are not adversely affected thereby.

Section 7 Redemption.

(a) General. Other than as specifically permitted by this Certificate of Designations, the Company is not required to redeem any of the outstanding Series A-1 Convertible Preferred Stock.

(b) Redemption at the Option of the Company.

(i) At any time after the date that is five (5) years after the Initial Issue Date until the date that is six (6) years after the Initial Issue Date, the Company shall have the right to redeem all, but not less than all, of the Series A-1 Convertible Preferred Stock then outstanding at a redemption price in cash equal to the product of (x) the Fixed Liquidation Preference of the Series A-1 Convertible Preferred Stock then outstanding and (y) 105%, plus accumulated and unpaid dividends to, but not including, the date of redemption.

(ii) At any time after the date that is six (6) years after the Initial Issue Date, the Company shall have the right to redeem all, but not less than all, of the Series A-1 Convertible Preferred Stock then outstanding at a redemption price in cash equal to the Fixed Liquidation Preference of the Series A-1 Convertible Preferred Stock then outstanding, plus accumulated and unpaid dividends to, but not including, the date of redemption.

(iii) The Company may exercise its right to redeem the SeriesA-1 Convertible Preferred Stock under this Section 7(b) by delivering a written notice (the "Redemption Notice") thereof to all of the holders of Series A-1 Convertible Preferred Stock and the date such holders are given such notice is referred to as a "Redemption Notice Date". Each Redemption Notice shall be irrevocable. Such Redemption Notice shall (A) state the date on which the redemption shall occur, which date shall be no earlier than 10 days nor later than 30 days after the Redemption Notice Date (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day), and (B) state the redemption price per share of Series A-1 Convertible Preferred Stock to be paid on the redemption date. Holders of Series A-1 Convertible Preferred Stock may continue to exercise their right to convert SeriesA-1 Convertible Preferred Stock under this Certificate of Designations after the Redemption Notice Date but prior to the date of redemption.

(c) Mandatory Redemption. (i) At any time after the date that is eight (8) years after the Initial Issue Date, (ii) upon a Sale of the Company or (iii) at any time after the occurrence and continuance of an Event of Default, the holders of the Series A-1 Convertible Preferred Stock shall have the right to require the Company to redeem all, but not less than all, of the Series A-1 Convertible Preferred Stock then outstanding at a redemption price in cash equal to the greater of (x) the fair market value per share of Series A-1 Convertible Preferred Stock (based on the Average VWAP per share of Class A Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Mandatory Redemption Notice),

calculated on an as-if converted basis as if such Series A-1 Convertible Preferred Stock was converted pursuant to Section 9 and (y) the Fixed Liquidation Preference, plus accrued and unpaid dividends to, but not including, the date of redemption (the "Mandatory Redemption Price"), by delivery of written notice thereof (the "Mandatory Redemption Notice") to the Company; provided that if a Sale of the Company occurs prior to the date that is six (6) years after the Initial Issue Date, clause (y) of the definition of Mandatory Redemption Price shall also include a cash amount equal to the Applicable Premium. Such Mandatory Redemption Notice shall (A) state the date on which the redemption shall occur, which date shall be no earlier than 10 days nor later than 30 days following the date of delivery of such Mandatory Redemption Notice (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day), and (B) state the Mandatory Redemption Price per share of Series A-1 Convertible Preferred Stock to be paid on the redemption date. For the avoidance of doubt, Holders of Series A-1 Convertible Preferred Stock may continue to exercise their right to convert their Series A-1 Convertible Preferred Stock under this Certificate of Designations at any time after or prior to the date of the Mandatory Redemption Notice but prior to the date of redemption.

(i) Effect of Redemption. Effective immediately prior to the close of business on the day before any shares of Series A-1 Convertible Preferred Stock are redeemed pursuant to this Certificate of Designations, Preferential Coupons shall no longer accrue or be declared on any such shares of Series A-1 Convertible Preferred Stock, and such shares of Series A-1 Convertible Preferred Stock shall cease to be outstanding.

(ii) Status of Redeemed Shares. Shares of Series A-1 Convertible Preferred Stock redeemed in accordance with this Certificate of Designation shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as to a particular series by the Board of Directors pursuant to provisions of the Charter.

Section 8 Mandatory Conversion.

(a) If at any time, or from time to time, from and after the second (2nd) anniversary, but on or prior to the third anniversary, of the Initial Issue Date, the Last Reported Sale Price of the Class A Common Stock has equaled or exceeded 150% of the Conversion Price for at least 20 out of any 30 consecutive Trading Days immediately preceding the Mandatory Conversion Notice Date, and the Liquidity Conditions are met, the Company shall have the right to require the holders of Series A-1 Convertible Preferred Stock to convert all, or any portion, of the outstanding Series A-1 Convertible Preferred Stock on the Mandatory Conversion Date (a "Mandatory Conversion"), as designated in the Mandatory Conversion Notice relating to the applicable Mandatory Conversion, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A-1 Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Mandatory Conversion Date) *divided* by the Conversion Price as of the applicable Mandatory Conversion Date.

(b) If at any time, or from time to time, after the third (3rd) anniversary of the closing of the Initial Issue Date, the Last Reported Sale Price of the Class A Common Stock has equaled or exceeded 125% of the Conversion Price for at least 20 out of any 30 consecutive Trading Days immediately preceding the Mandatory Conversion Notice Date, and the Liquidity Conditions are met, the Company shall have the right to effect a Mandatory Conversion of the outstanding Series

A-1 Convertible Preferred Stock on the Mandatory Conversion Date, as designated in the Mandatory Conversion Notice relating to the applicable Mandatory Conversion, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A-1 Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Mandatory Conversion Date) *divided* by the Conversion Price as of the applicable Mandatory Conversion Date.

(c) The Company may exercise its right to require conversion under this Section 8 by delivering a written notice thereof to all holders of Series A-1 Convertible Preferred Stock (a "Mandatory Conversion Notice" and such delivery is referred to as a "Mandatory Conversion Notice Date"). Each Mandatory Conversion Notice shall be irrevocable. Each Mandatory Conversion Notice shall state (x) the Trading Day on which the applicable Mandatory Conversion shall occur, which Trading Day shall be the twentieth (20^{th}) Trading Day following the applicable Mandatory Conversion Notice Date (or, if such date falls on a day that is not a Business Day, the next day that is a Business Day) (a "Mandatory Conversion Date"), (y) the number of shares of Series A-1 Convertible Preferred Stock which the Company has elected to be subject to such Mandatory Conversion from such holder and in the aggregate pursuant to this Section 8 and (z) the number of shares of Class A Common Stock to be issued to such holder on the applicable Mandatory Conversion Date.

(a) **Section 9 Optional Conversion.** Subject to satisfaction of the conversion procedures set forth in this Section 9, each holder of share of Series A-1 Convertible Preferred Stock shall have the option to convert its Series A-1 Convertible Preferred Stock, in whole or in part (but in no event less than one share of Series A-1 Convertible Preferred Stock), at any time, into a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference for such shares of Series A-1 Convertible Preferred Stock (plus any accrued and unpaid dividends to, but excluding, such Conversion Date) *divided* by the Conversion Price as of the applicable Conversion Date.

(b) To effect a conversion, pursuant to Section 9, a holder of Series A-1 Convertible Preferred Stock must:

(i) complete and manually sign the conversion notice attached hereto as Exhibit A or a facsimile of such conversion notice;

(ii) deliver the completed conversion notice and the shares of Series A-1 Convertible Preferred Stock to be converted to the Company;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay all transfer or similar taxes or duties, if any.

(c) A conversion pursuant to Section 9 shall be effective on the date on which a holder of shares of Series A-1 Convertible Preferred Stock has satisfied the foregoing requirements, to the extent applicable (the "Conversion Date").

(d) A holder of shares of Series A-1 Convertible Preferred Stock shall not be required to pay any transfer or similar taxes or duties relating to the issuance or delivery of shares of Class A Common Stock upon conversion, but such holder shall be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of shares of Class A Common Stock in a name other than the name of such holder.

(e) The Class A Common Stock issuable upon conversion shall be issued and credited to the account of the converting holder in the records of the applicable transfer agent only after all applicable taxes and duties, if any, payable by such converting holder have been paid in full, and such shares will be delivered on the latest of (i) the second Business Day immediately succeeding the Conversion Date and (ii) the Business Day after the holder has paid in full all applicable taxes and duties, if any.

(f) The Person or Persons entitled to receive the Class A Common Stock issuable upon conversion shall be treated for all purposes as the record holder(s) of such units, as the case may be, as of the close of business on the applicable Conversion Date or Mandatory Conversion Date, as applicable. Except as set forth elsewhere herein, prior to the close of business on such applicable Conversion Date, the Class A Common Stock issuable upon conversion of any Series A-1 Convertible Preferred Stock shall not be deemed to be outstanding for any purpose, and holders shall have no rights, powers or preferences with respect to such units by virtue of holding Series A-1 Convertible Preferred Stock.

(g) In the event that a conversion is effected with respect to shares of Series A-1 Convertible Preferred Stock representing less than all the shares of the Series A-1 Convertible Preferred Stock held by a holder thereof, upon such conversion the Company shall execute and deliver to the holder thereof, at the expense of the Company, a certificate or book-entry position evidencing the shares of Series A-1 Convertible Preferred Stock as to which conversion was not effected.

(h) In the event that a holder of Series A-1 Convertible Preferred Stock shall not by written notice designate the name in which shares of Class A Common Stock to be issued upon conversion of such Series A-1 Convertible Preferred Stock should be registered, the Company shall be entitled to register such shares in the name of the holder as shown on the records of the Company.

(i) Shares of Series A-1 Convertible Preferred Stock shall cease to be outstanding on the applicable Conversion Date or Mandatory Conversion Date, as applicable, subject to the right of holders of such Series A-1 Convertible Preferred Stock to receive Class A Common Stock issuable upon conversion of such Series A-1 Convertible Preferred Stock.

(j) *Fractional Shares*. No fractional shares of Class A Common Stock shall be issued to holders of Series A-1 Convertible Preferred Stock as a result of any conversion of Series A-1 Convertible Preferred Stock, and any fractional shares of Class A Common Stock shall be rounded to the nearest whole number.

Section 10 Conversion Procedures; Transfers; Regulatory Matters.

(a)

(i) If a holder of any shares of Series A-1 Convertible Preferred Stock decides to convert such shares into shares of Series A Convertible Preferred Stock, such holder shall notify the Company. If the relevant holder determines that the conversion is subject to approval, clearance, or filing and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") or any other applicable antitrust law, the conversion shall not occur until the receipt of all such clearances or approvals, or the expiration or termination of all such waiting periods, applicable to the conversion of shares of Series A-1 Convertible Preferred Stock into shares of Series A Convertible Preferred Stock (such receipt, expiration or termination being referred to as "HSR Clearances"). If HSR Clearances are required in connection with a conversion, the relevant shares of Series A-1 Convertible Preferred Stock shall immediately and automatically convert on a one-for-one basis to shares of Series A Convertible Preferred Stock in accordance with the procedures identified in this Section 10 the next business day following all applicable HSR Clearances (the "HSR Conversion"). If the relevant holder determines that no HSR Clearances are applicable to its conversion of any shares of Series A-1 Convertible Preferred Stock into shares of Series A Convertible Preferred Stock, the relevant shares of the Series A-1 Convertible Preferred Stock shall immediately and automatically convert on a one-for-one basis to shares of Series A Convertible Preferred Stock (the "non-HSR Conversion," and collectively with the HSR Conversion, the "Series A-1 Conversion,") in accordance with the procedures identified in this Section 10; provided, that no such HSR Conversion shall occur with respect to any shares of Series A-1 Convertible Preferred Stock that are not held by an Initial Holder or its Permitted Transferee.

(ii) As promptly as practicable, and in no event later than the third business day after the later of (x) the effective date of the Series A-1 Conversion and (y) the date the Company receives notice of the HSR Clearances if applicable, the Company will deliver or cause to be delivered in respect of each share of Series A-1 Convertible Preferred Stock being converted into shares of Series A Convertible Preferred Stock, certificates or book-entry positions representing one (1) validly issued, fully paid and nonassessable share (as equitably adjusted, including for any adjustment to the Conversion Rate and Conversion Price, for any stock split, reverse stock split, combination, recapitalization or similar event with respect to the Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock, as applicable) of Series A Convertible Preferred Stock. This conversion will be deemed to have been made on the effective date of the Series A-1 Conversion so that the rights of the holder of shares of the Series A-1 Convertible Preferred Stock as to the shares being converted will cease except for the right to receive the shares of Series A Convertible Preferred Stock deliverable upon conversion, and, if applicable, the person entitled to receive shares of Series A Convertible Preferred Stock will be treated for all purposes as having become the record holder of those shares of Series A Convertible Preferred Stock as of the date of the Series A-1 Conversion.

(iii) A holder of shares of Series A-1 Convertible Preferred Stock is not entitled to any rights of a holder of Series A Convertible Preferred Stock until the occurrence of the Series A-1 Conversion.

(iv) All accumulated but unpaid dividends on such shares of Series A-1 Convertible Preferred Stock immediately prior to such Series A-1 Conversion shall be converted into an equivalent amount of accumulated but unpaid dividends on shares of Series A Convertible Preferred Stock immediately following such Series A-1 Conversion.

(v) Following the Series A-1 Conversion with respect to all holders of Series A-1 Preferred Stock this Section 10 shall be null and void and deemed deleted from this Certificate of Designations.]

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(b) If a holder of Series A-1 Convertible Preferred Stock determines, in its sole judgment upon the advice of counsel, that any conversion pursuant to the terms hereof would be subject to the provisions of the HSR Act, the Company shall file, or cause its ultimate parent entity as that term is defined in the HSR Act to file, as soon as practicable after the date on which the Company receives notice from such holder of Series A-1 Convertible Preferred Stock of the applicability of the HSR Act and a request to so file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form and any supplemental information required to be filed by it pursuant to the HSR Act in connection with the conversion of any Series A-1 Convertible Preferred Stock (and in any event the Company shall make such filing no later than seven (7) Business Days after the date on which the holder of Series A-1 Convertible Preferred Stock filed with the FTC and DOJ the notification and report form required to be filed by the holder of Series A-1 Convertible Preferred Stock pursuant to the HSR Act in connection with the conversion of any shares of Series A-1 Convertible Preferred Stock. Any such notification and report form and supplemental information will be in full compliance with the requirements of the HSR Act. If a holder of Series A-1 Convertible Preferred Stock determines, in its sole judgment upon the advice of counsel, that any conversion pursuant to the terms hereof could be subject to the provisions of any non-US antitrust, merger control, or competition law (collectively, the "Foreign Antitrust Laws"), the Company will cooperate and supply promptly to the holder of the Series A-1 Preferred Stock such information and assistance as the holder of the Series A-1 Preferred Stock may reasonably request to assess whether any conversion would be subject to filing requirements under any Foreign Antitrust Law. If the holder determines that a filing is required or advisable under any Foreign Antitrust Law in connection with any conversion, and if the Company is required to make a separate filing under any such Foreign Antitrust Law the Company will promptly do so after being notified of the requirement by the holder of Series A-1 Convertible Preferred Stock. The Company will furnish to the holder of Series A-1 Convertible Preferred Stock promptly (but in no event more than five days after receipt of a reasonable request therefore) such information and assistance as the holder of Series A-1 Convertible Preferred Stock may reasonably request in connection with the preparation of any filing or submission to be filed by the holder of Series A-1 Convertible Preferred Stock under the HSR Act or any applicable Foreign Antitrust Law. The Company shall respond promptly after receiving any inquiries or requests for additional information from the FTC, the DOJ, or any governmental entity under any Foreign Antitrust Law in connection with any conversions of Series A-1 Convertible Preferred Stock. The Company shall keep the holder of Series A-1 Convertible Preferred Stock apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC, the DOJ, or any governmental entity in connection with any conversions of Series A-1 Convertible Preferred Stock. The Company shall bear all filing or other fees required to be paid by the Company and the holder of Series A-1 Convertible Preferred Stock (or the "ultimate parent entity" of the holder of Series A-1 Convertible Preferred Stock, if any)

under the HSR Act or any other applicable law in connection with such filings and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Company and the holder of Series A-1 Convertible Preferred Stock in connection with the preparation of such filings and responses to inquiries or requests. In the event that this Section 10(b) is applicable to any conversion, the delivery of any shares of Class A Common Stock upon conversion shall be subject to the receipt of clearances, approvals, and the expiration or earlier termination of the waiting periods under the HSR Act and Foreign Antitrust Laws (with the Conversion Date or Mandatory Conversion Date, as applicable, being deemed to be the date immediately following the date of the receipt of the last of the required clearances, approvals, and waiting period expirations or early terminations).

(c) Transfers. At such time as any Transfer, other than a Transfer to a Permitted Transferee, of Series A Convertible Preferred Stock by an Initial Holder (or its Permitted Transferee) occurs, then all shares of the Series A Convertible Preferred Stock Transferred by such Initial Holder (or its Permitted Transferee) shall immediately and automatically upon such Transfer convert on a one-for-one basis to shares of Series A-1 Convertible Preferred Stock (the "Transfer Conversion") in accordance with the procedures identified in this Section 10.

(i) An Initial Holder (or its Permitted Transferee) shall provide written notice to the Company at least two (2) Business Days prior to a direct Transfer (other than a Transfer to a Permitted Transferee). On the settlement date for such Transfer (subject to the surrender to the Company of the shares of Series A Convertible Preferred Stock being Transferred), the Company will deliver or cause to be delivered to the transferee of such shares in respect of each share of Series A Convertible Preferred Stock being Transferred, certificates or book-entry positions representing one (1) validly issued, fully paid and nonassessable share (as equitably adjusted for any stock split, reverse stock split, combination, recapitalization or similar event with respect to the Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock, as applicable) of Series A-1 Convertible Preferred Stock. This conversion will be deemed to have been made on the effective date of the Transfer so that the rights of the holder of shares of the Series A Convertible Preferred Stock as to the shares being converted will cease, and the Transferee shall only have the right to receive the shares of Series A-1 Convertible Preferred Stock deliverable upon Transfer and conversion, and, if applicable, the person entitled to receive shares of Series A-1 Convertible Preferred Stock will be treated for all purposes as having become the record holder of those shares of Series A-1 Convertible Preferred Stock as of the date of the Transfer.

(ii) All accumulated but unpaid dividends on such shares of Series A Convertible Preferred Stock immediately prior to such Transfer shall be converted into an equivalent amount of accumulated but unpaid dividends on shares of Series A-1 Convertible Preferred Stock immediately following such Transfer.

(d) Notwithstanding anything to the contrary contained herein, other than in the case of a Mandatory Conversion, a holder of Series A-1 Convertible Preferred Stock shall not be entitled to receive shares of Common Stock or any other "equity securities" (as defined in the Exchange Act) and the rules and regulations promulgated thereunder) in the Company (together with the Common Stock, "Equity Interests") upon any conversion of shares of Series A-1 Convertible Preferred Stock to the extent (but only to the extent) that such exercise or receipt would cause any holder of Series A-1 Convertible Preferred Stock to become, directly or indirectly, a "beneficial owner" (within the

meaning of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) of a number of Equity Interests of a class that is registered under the Exchange Act which exceeds the Maximum Percentage (as defined below) of the Equity Interests of such class that are outstanding at such time. This limitation on beneficial ownership may be increased, decreased or terminated, in the holder of Series A-1 Convertible Preferred Stock's sole discretion, upon 61 days' written notice to the Company by the holder of Series A-1 Convertible Preferred Stock. Any purported delivery of Equity Interests in connection with the conversion of any shares of Series A-1 Convertible Preferred Stock prior to the termination of this restriction in accordance herewith shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the holder of Series A-1 Convertible Preferred Stock becoming the beneficial owner of more than the Maximum Percentage of the Equity Interests of a class that is registered under the Exchange Act that is outstanding at such time. If any delivery of Equity Interests owed to a holder of Series A-1 Convertible Preferred Stock upon conversion is not made, in whole or in part, as a result of this limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall deliver such Equity Interests as promptly as practicable after the holder of Series A-1 Convertible Preferred Stock gives notice to the Company that such delivery would not result in such limitation being triggered or upon termination of the restriction in accordance with the terms hereof. For purposes of this Section 10(d), (i) the term "Maximum Percentage" shall mean 9.99%. For any reason at any time, upon written or oral request of the holder of Series A-1 Convertible Preferred Stock, the Company shall, within two Business Days of such request, confirm orally and in writing to the holder of Series A-1 Convertible Preferred Stock the number of Equity Interests of any class then outstanding. The provisions of this clause (d) shall be construed, corrected and implemented in a manner so as to effectuate the intended beneficial ownership limitation herein contained.

Section 11 Anti-Dilution Adjustments to the Conversion Rate.

(a) The Conversion Rate shall be adjusted as set forth in this Section 11, except that the Company shall not make any adjustments to the Conversion Rate if holders of Series A-1 Convertible Preferred Stock participate (other than in the case of a share or unit split or share or unit combination), at the same time and upon the same terms as holders of Class A Common Stock, and solely as a result of holding the Series A-1 Convertible Preferred Stock, in any of the transactions set forth in Sections 11(b)-(f) without having to convert their Series A-1 Convertible Preferred Stock as if they held a number of shares of Class A Common Stock equal to (x) the Fixed Liquidation Preference divided by the Conversion Price as of the Record Date for such transaction, multiplied by (y) the number of shares of Series A-1 Convertible Preferred Stock held by such holder. The Conversion Rate shall not, however, be adjusted with respect to any use of the proceeds of the offer and sale of the Series A-1 Convertible Preferred Stock pursuant to the Securities Purchase Agreement or in connection with any transaction contemplated by the Up-C Steps Memo (as defined in the Securities Purchase Agreement).

(b) If the Company exclusively issues shares of Class A Common Stock as a dividend or distribution on shares of Class A Common Stock, or if the Company effects a share split or share combination of the Class A Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such Effective Date, as applicable;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and

OS_1 = the number of shares of Class A Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 11(b) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type set forth in this Section 11(b) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the purposes of this Section 11(b), the number of shares of Class A Common Stock outstanding immediately prior to the close of business on the Record Date and the number of shares of Class A Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination shall, in each case, not include shares that the Company holds in treasury. The Company shall not pay any dividend or make any distribution on shares of Class A Common Stock that it holds in treasury.

(c) If the Company issues to all or substantially all holders of Class A Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of Class A Common Stock at a price per share that is less than the Average VWAP per share of Class A Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date;

X = the total number of shares of Class A Common Stock issuable pursuant to such rights, options or warrants; and
Y = the number of shares of Class A Common Stock equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 11(c) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Class A Common Stock are not delivered after the exercise of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Class A Common Stock actually delivered, if any. If such rights, options or warrants are not so issued, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For the purpose of this Section 11(c), in determining whether any rights, options or warrants entitle the holders of Class A Common Stock to subscribe for or purchase shares of Class A Common Stock at less than such Average VWAP per share for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Class A Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors or a committee thereof.

(d) If the Company distributes shares of its capital stock, evidences of the Company's indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities, to all or substantially all holders of Class A Common Stock, excluding:

(i) dividends, distributions or issuances as to which the provisions set forth in Section 11(b) or Section 11(c) shall apply;

(ii) any dividends and distributions upon conversion of, or in exchange for, shares of Class A Common Stock in connection with a recapitalization, reclassification, change, consolidation, merger or other combination, share exchange, or sale, lease or other transfer or disposition resulting in the change in the conversion consideration as set forth under Section 12;

(iii) except as otherwise set forth in Section 11(g), rights issued pursuant to a shareholder rights plan adopted by the Company; and

(iv) Spin-Offs as to which the provisions set forth below in this Section 11(d) shall apply;

then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors or a committee thereof in good faith) of the shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants so distributed, expressed as an amount per share of Class A Common Stock on the Ex-Date for such distribution.

Any increase made under the portion of this Section 11(d) will become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP0" (as defined above), or if the difference is less than $1.00, in lieu of the foregoing increase, each holder of Series A-1 Convertible Preferred Stock shall receive, in respect of each share of Series A-1 Convertible Preferred Stock, at the same time and upon the same terms as holders of Class A Common Stock, the amount and kind of the Company's capital stock, evidences of the Company's indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities that such holder would have received if such holder owned a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference divided by the Conversion Price in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 11(d) where there has been a Spin-Off, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Ex-Date for the Spin-Off (the "Valuation Period");

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV_0 = the Average VWAP per share of the capital stock or similar equity interest distributed to holders of Class A Common Stock applicable to one share of Class A Common Stock over the Valuation Period; and

MP_0 = the Average VWAP per share of Class A Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph will become effective at the close of business on the last Trading Day of the Valuation Period.

Notwithstanding the foregoing, if any date for determining the number of shares of Class A Common Stock issuable to a holder of Series A-1 Convertible Preferred Stock occurs during the Valuation Period, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the beginning of the Valuation Period and such determination date for purposes of determining the Conversion Rate. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors or a committee thereof determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For purposes of this Section 11(d) (and subject in all respects to Section 11(b) and Section 11(c):

(i) rights, options or warrants distributed by the Company to all or substantially all holders of the Class A Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Class A Common Stock (either initially or under certain conditions), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (1) are deemed to be transferred with such shares of the Class A Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of the Class A Common Stock, shall be deemed not to have been distributed for purposes of this Section 11(d) (and no adjustment to the Conversion Rate under this Section 11(d) shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 11(d).

(ii) If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Initial Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

(iii) In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding clause (ii)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this clause (iii) was made:

A. in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution pursuant to Section 11(e), equal to the per share redemption or repurchase price received by a holder or holders of Class A Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Common Stock as of the date of such redemption or repurchase; and

B. in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued;

provided that, in each case, such rights, options or warrants are deemed to be transferred with such shares of the Class A Common Stock and are also issued in respect of future issuances of the Class A Common Stock.

For purposes of Section 11(b), Section 11(c) and this Section 11(d), if any dividend or distribution to which this Section 11(d) is applicable includes one or both of:

(i) a dividend or distribution of shares of Class A Common Stock to which Section 11(b) is applicable (the "Clause A Distribution"); or

(ii) an issuance of rights, options or warrants to which Section 11(c) is applicable (the "Clause B Distribution"), then:

A. such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 11(d) is applicable (the "Clause C Distribution") and the Conversion Rate adjustment required by this Section 11(d) with respect to such Clause C Distribution shall then be made; and

B. the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and the Conversion Rate adjustment required by Section 11(b) and Section 11(c) with respect thereto shall then be made, except that, if determined by the Company (I) the "Record Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Class A Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date" within the meaning of Section 11(b) or "outstanding immediately prior to close of business on such Record Date" within the meaning of Section 11(c).

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for Class A Common Stock, to the extent that the cash and value of any other

consideration included in the payment per share of Class A Common Stock exceeds the Average VWAP per share of Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

CR_1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors or a committee thereof in good faith) paid or payable for shares purchased in such tender or exchange offer;

OS_0 = the number of shares of Class A Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Class A Common Stock outstanding immediately after the Expiration Date (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the Average VWAP of Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date (the "Averaging Period").

The increase to the Conversion Rate under the preceding paragraph will become effective at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date. Notwithstanding the foregoing, if any date for determining the number of shares of Class A Common Stock issuable to a holder of Series A-1 Convertible Preferred Stock occurs within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Expiration Date of such tender or exchange offer and such determination date for purposes of determining the Conversion Rate. For the avoidance of doubt, no adjustment under this Section 11(e) will be made if such adjustment would result in a decrease in the Conversion Rate, except as set forth in the immediately succeeding sentence.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Class A Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

(f) If any cash dividend or distribution is made to all or substantially all holders of Class A Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution;

SP0 = the Last Reported Sale Price of the Class A Common Stock on the Trading Day immediately preceding theEx-Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of Class A Common Stock, excluding any amount the holders of Series A-1 Convertible Preferred Stock received as a Participating Dividend with respect thereto.

Any increase made under this Section 11(f) shall become effective immediately after close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors or a committee thereof determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, each holder of a share of Series A-1 Convertible Preferred Stock shall receive, at the same time and upon the same terms as holders of shares of Class A Common Stock, the amount of cash that such holder would have received if such holder owned a number of shares of Class A Common Stock equal to the Fixed Liquidation Preference divided by the Conversion Price in effect on the Record Date for such cash dividend or distribution.

(g) If, on or after the Initial Issue Date, the Company or any of its Subsidiaries issues or otherwise sells any shares of Class A Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Class A Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this Section 11(g)) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a "Degressive Issuance"), then, effective as of the close of business on such date, the Conversion Rate will be increased to an amount equal to (x) the Fixed Liquidation Preference per share of Series A-1 Convertible Preferred Stock, divided by (y) the Weighted Average Issuance Price. For these purposes, the "Weighted Average Issuance Price" will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where,

CP = the Conversion Price in effect immediately before giving effect to the adjustment required by this Section 11(g);

OS = the number of shares of Class A Common Stock outstanding immediately before such Degressive Issuance;

EP = the Effective Price per share of Class A Common Stock in such Degressive Issuance; and

X = the sum, without duplication, of (x) the total number of shares of Class A Common Stock issued or sold in such Degressive Issuance; and (y) the maximum number of shares of Class A Common Stock underlying such Equity-Linked Securities issued or sold in such Degressive Issuance;

provided, *however*, that (A) the Conversion Rate will not be adjusted pursuant to this Section 11(g) solely as a result of any transaction pursuant to Section 11(j); (B) the issuance of shares of Class A Common Stock pursuant to any such Equity-Linked Securities will not constitute an additional issuance or sale of shares of Class A Common Stock for purposes of this Section 11(g) (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this Section 11(g); and (C) in no event will the Conversion Rate be decreased pursuant to this Section 11(g). For purposes of this Section 11(g), any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Initial Issue Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Rate.

(h) If the Company has a rights plan in effect upon conversion of the Series A-1 Convertible Preferred Stock into Class A Common Stock, the holders of Series A-1 Convertible Preferred Stock shall receive, in addition to any shares of Class A Common Stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of Class A Common Stock in accordance with the provisions of the applicable rights plan, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all or substantially all holders of Class A Common Stock, shares of its capital stock, evidences of indebtedness, assets, property, rights, options or warrants as set forth in Section 11(d), subject to readjustment in the event of the expiration, termination or redemption of such rights. The Company and the Board of Directors will take all necessary action in order to render inapplicable any shareholder rights plan or similar arrangement to holders of the Series A-1 Convertible Preferred Stock solely in respect of the Series A-1 Convertible Preferred Stock and the shares of Class A Common Stock issued or issuable upon conversion thereof.

(i) The Company may (but is not required to), to the extent permitted by law and the rules of the Relevant Exchange or any other securities exchange on which the shares of Class A Common Stock is then listed, increase the Conversion Rate by any amount for a period of at least 20 Business Days if such increase is irrevocable during such 20 Business Days and the Board of Directors, or a committee thereof, determines that such increase would be in the best interest of the Company. The Company may also (but is not required to) make such increases in the Conversion Rate as it deems advisable in order to avoid or diminish any income tax to holders of Class A Common Stock resulting from any dividend or distribution of shares of Class A Common Stock or

from any event treated as such for income tax purposes or for any other reason.

(j) The Company shall not adjust the Conversion Rate:

(i) upon the issuance of shares of Class A Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Class A Common Stock under any plan;

(ii) upon the issuance of any shares of Class A Common Stock or rights or warrants to purchase such shares of Class A Common Stock pursuant to any present or future benefit or other incentive plan or program of or assumed by the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Class A Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in (ii) of this Section 11(i) and outstanding as of the Initial Issue Date;

(iv) for a change in par value of the Class A Common Stock; or

(v) for stock repurchases that are not tender offers referred to in Section 11(e), including structured or derivative transactions or pursuant to a stock repurchase program approved by the Board of Directors.

(k) Adjustments to the Conversion Rate will be calculated to the nearest 1/10,000th of a share of Class A Common Stock. No adjustment to the Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate; provided, however, that if an adjustment is not made because the adjustment does not change the Conversion Rate by at least 1%, then such adjustment will be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, on each date for determining the number of shares of Class A Common Stock issuable to a holder of Series A-1 Convertible Preferred Stock upon any conversion of the Series A-1 Convertible Preferred Stock, the Company shall give effect to all adjustments that otherwise had been deferred pursuant to this clause (xi), and those adjustments will no longer be carried forward and taken into account in any future adjustment. Except as otherwise provided above, the Company will be responsible for making all calculations called for under the Series A-1 Convertible Preferred Stock and shall be made in good faith.

(l) Whenever any provision of this Certificate of Designations requires the Company to calculate the VWAP per share of Class A Common Stock over a span of multiple days, the Board of Directors, or any authorized committee thereof, shall make appropriate adjustments in good faith to account for any adjustments to the Conversion Rate that become effective, or any event that would require such an adjustment if the Ex-Date, Effective Date, Record Date or Expiration Date, as the case may be, of such event occurs during the relevant period used to calculate such prices or values, as the case may be.

(m) Whenever the Conversion Rate is to be adjusted, the Company shall:

(i) compute such adjusted Conversion Rate;

(ii) within 5 Business Days after the Conversion Rate is to be adjusted, provide or cause to be provided, a written notice to the holders of Series A-1 Convertible Preferred Stock of the occurrence of such event; and

(iii) within 5 Business Days after the Conversion Rate is to be adjusted, provide or cause to be provided, to the holders of SeriesA-1 Convertible Preferred Stock, a statement setting forth in reasonable detail the method by which the adjustments to the Conversion Rate were determined and setting forth such adjusted Conversion Rate.

Section 12 Recapitalizations, Reclassifications and Changes of Common Stock. In the event of:

(a) any consolidation or merger of the Company with or into another Person (other than a merger or consolidation in which the Company is the surviving corporation and in which the Class A Common Stock outstanding immediately prior to the merger or consolidation is not exchanged for cash, securities or other property of the Company or another Person);

(b) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(c) any reclassification of Class A Common Stock into another class of Common Stock or any other securities; or

(d) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition),

in each case, as a result of which the Class A Common Stock would be converted into, or exchanged for, stock, other securities or other property or assets (including cash or any combination thereof) (each, a "Reorganization Event"), each share of Series A-1 Convertible Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the holders of the Series A-1 Convertible Preferred Stock, become convertible into the kind of stock, other securities or other property or assets (including cash or any combination thereof) that such holder would have been entitled to receive if such holder had converted its Series A-1 Convertible Preferred Stock into Class A Common Stock immediately prior to such Reorganization Event (such stock, other securities or other property or assets (including cash or any combination thereof), the "Exchange Property," with each "Unit of Exchange Property" meaning the kind and amount of such Exchange Property that a holder of one share of Class A Common Stock is entitled to receive).

If the transaction causes the Class A Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Exchange Property into which the Series A-1 Convertible Preferred Stock shall be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the Class A Common Stock.

The Company shall notify holders of Series A-1 Convertible Preferred Stock of the weighted average referred to in the preceding sentence as soon as practicable after such determination is made.

The number of Units of Exchange Property the Company shall deliver for each share of Series A-1 Convertible Preferred Stock converted following the effective date of such Reorganization Event shall be determined as if references in Section 8 and Section 9 to shares of Class A Common Stock were to Units of Exchange Property (without interest thereon and without any right to dividends or distributions thereon which have a Record Date that is prior to the date such shares of Series A-1 Convertible Preferred Stock are actually converted).

On or before the date the Reorganization Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee person (if not the Company) of such Reorganization Event (the "Successor Person") will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Rate in a manner consistent with this Section 12; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the holders of the Series A-1 Convertible Preferred Stock and to give effect to this Section 12. If the Exchange Property includes shares of stock or other securities or assets (other than cash) of a person other than the Successor Person, then such other person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the holders of the Series A-1 Convertible Preferred Stock.

The above provisions of this Section 12 shall similarly apply to successive Reorganization Events, and the provisions of Section 11 shall apply to any shares of capital stock or ADRs of the Company (or any successor thereto) received by the holders of Class A Common Stock in any such Reorganization Event.

The Company (or any successor thereto) provide written notice to the holders of Series A-1 Convertible Preferred Stock of the occurrence of any Reorganization Event and of the kind and amount of cash, securities or other property that constitute the Exchange Property no later than the effective date of the Reorganization Event. Failure to deliver such notice shall not affect the operation of this Section 12.

Section 13 Events of Default.

(a) If any of the following events occur, it shall be an event of default (each, an "Event of Default") under the Series A-1 Convertible Preferred Stock:

(i) The Company fails to pay the Mandatory Redemption Price when due as set forth herein and such breach continues for a period of three (3) days after written notice from the holder of the Series A-1 Convertible Preferred Stock;

(ii) The Company fails to issue shares of Class A Common Stock to a holder of Series A-1 Convertible Preferred Stock upon exercise by such holder of the conversion rights of a such holder in accordance with the terms hereof and such breach continues for a period of three (3) days after written notice from the holder of the Series A-1 Convertible Preferred Stock;

(iii) the Company or any of its Affiliates shall default in the performance or compliance of any term contained in the Financing Agreement or any other Indebtedness of the Company in excess of $5,000,000, which default results in an acceleration, and such acceleration shall continue unremedied after its applicable grace or cure period;

(iv) The Company breaches any covenant or other obligation to the holders of Series A-1 Convertible Preferred Stock contained in this Certificate of Designations or in any purchase agreement, subscription agreement or other agreement pursuant to which any holder of Series A-1 Convertible Preferred Stock has acquired any Series A-1 Convertible Preferred Stock, and such breach continues for a period of twenty (20) days (or, in the case of a breach of the Company's obligations in Section 19, thirty (30) days), to the extent curable, after written notice thereof to the Company from the holders of the Series A-1 Convertible Preferred Stock;

(v) The Company or any of its Subsidiaries (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (v); or

(vi) any proceeding shall be instituted against the Company or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur.

(b) Upon the occurrence and during the continuation of any Event of Default, (i) the Preferential Coupon Rate shall immediately be increased by 10.00% per annum, and (ii) the Company shall immediately, upon the demand of the holders of the Series A-1 Convertible Preferred Stock, redeem the issued and outstanding shares of Series A-1 Convertible Preferred Stock at the Mandatory Redemption Price plus the Applicable Premium (if any) payable in cash.

(c) [*Series A:* If the Company fails to complete a required mandatory redemption within 30 days of the underlying requirement or demand for such redemption and so long as such Event of Default with respect to such mandatory redemption is continuing, the Holder Majority shall have the right: (i) to immediately appoint one additional individual to the Board of Directors, (ii) to, after such Event of Default has continued for six months, appoint an additional number of individuals to the Board of Directors such that the Holder Majority has the right to appoint not less than 25% of the Directors to the Board of Directors and (iii) after such Event of Default has been continuing for a year, appoint an additional number of individuals to the Board of Directors such that the Holder Majority has the right to appoint not less than a majority of the Directors to the Board of Directors.

Section 14 Conversion Shares.

(a) The Company shall at all times reserve and keep available out of its authorized and unissued capital stock, solely for issuance upon the conversion of Series A-1 Convertible Preferred Stock, and free from any preemptive or other similar rights, a number of shares of Class A Common Stock equal to the maximum number of shares of Class A Common Stock deliverable upon conversion of all shares of Series A-1 Convertible Preferred Stock.

(b) All shares of Class A Common Stock delivered upon conversion of the Series A-1 Convertible Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the holders thereof) and free of preemptive rights.

(c) Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of Series A-1 Convertible Preferred Stock, the Company shall comply with all applicable federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(d) The Company hereby covenants and agrees that, if at any time the Class A Common Stock shall be listed on any national stock exchange or automated quotation system, the Company shall, if permitted by the rules of such exchange or automated quotation system, list and use its commercially reasonable efforts to keep listed, so long as the Class A Common Stock shall be so listed on such exchange or automated quotation system, all Class A Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock; provided, however, that if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Class A Common Stock until the first conversion of Series A-1 Convertible Preferred Stock in accordance with the provisions hereof, the Company covenants to list such Class A Common Stock issuable in accordance with the requirements of such exchange or automated quotation system at such time.

Section 15 Compliance with Laws, Etc. The Company shall comply, and cause each of its Subsidiaries to comply with all applicable laws, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect (as such term is defined in the Securities Purchase Agreement).

Section 16 Publicity. All press releases or other public communications or announcements relating to the Series A-1 Convertible Preferred Stock contemplated hereby, and the method of the release for publication thereof, shall be subject to the prior written approval of the Holder Majority and the Company, which approval shall not be unreasonably withheld, conditioned or delayed; provided that the provisions of this Section 16 shall not apply to the extent that a public announcement is required by applicable securities laws, any governmental authority or stock exchange rule; provided further, that the party making such announcement shall use commercially reasonably efforts to consult with the other parties in advance as to its form, content and timing.

Section 17 Preemptive Rights.

(a) If, after the Initial Issue Date, the Company intends to issue New Securities for cash to any Person, then, at least 15 Business Days prior to the issuance of the New Securities, the Company shall deliver to the holders of the Series A-1 Convertible Preferred Stock an offer (the "Offer") to issue the New Securities to such holders upon the terms set forth in this Section 17; provided, however, that the Company shall have no obligation to make an Offer unless at such time such holder has record and beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of at least 50% of the aggregate of shares of Series A Convertible Preferred Stock and shares of Series A-1 Convertible Preferred Stock issued to such holder on the Initial Issue Date (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10).

(b) Notwithstanding the foregoing, the Company in its discretion may voluntarily provide an Offer to the holders of SeriesA-1 Convertible Preferred Stock even if the foregoing conditions have not been satisfied. The Offer shall state that the Company proposes to issue the New Securities and shall specify their number and terms (including purchase price). Any Offer may contemplate market flex terms for the issuance of the New Securities. The Offer shall remain open and irrevocable for a period of 15 Business Days (the "Offer Period") from the date of its delivery.

(c) Each holder of Series A-1 Convertible Preferred Stock shall have the right to purchase its Proportionate Portion of the New Securities on the terms and conditions set forth in the Offer by delivering written notice of acceptance thereof to the Company during the Offer Period. The closing of the purchase of New Securities by each such holder shall be held at the principal office of the Company at 11:00 a.m. local time on the closing date set forth in the Offer or at such other time and place as the parties to the transaction may agree. At such closing, the Company shall deliver the New Securities to each such holder against payment of the purchase price therefor by such holder. At such closing, all of the parties to the transaction shall execute such additional documents as are otherwise necessary or appropriate to consummate such transactions.

(d) If a holder of Series A-1 Convertible Preferred Stock does not elect to purchase all of the New Securities pursuant to thisSection 17, the Company may sell the New Securities on terms and conditions that are no more favorable in the aggregate to the applicable holder than those set forth in the Offer, provided the Company first offers such non purchased securities to the other Initial Holders of the SeriesA-1 Convertible Preferred Stock as set forth in this Section 17 on a pro rata basis consistent with their Proportionate Portion, and such offer shall remain open and irrevocable for a period of 5 Business Days. If such sale is not consummated within 180 days of the date upon which the Offer is given, then no issuance of New Securities may be made thereafter by the Company without again offering the same to holders of Series A-1 Convertible Preferred Stock in accordance with thisSection 17.

Section 18 Tax Treatment. For U.S. federal and applicable state and local income tax purposes, the Company and holders of the SeriesA-1 Convertible Preferred Stock shall not report on its tax returns or otherwise (including information returns) or otherwise treat (1) any Preferential Coupons or PIK Coupons that have accrued on the Series A-1 Convertible Preferred Stock but not have been paid in cash as constructive distributions required to be included into income of any holder of Series A-1 Convertible Preferred Stock (or its direct or indirect owners, as applicable) pursuant to Section

305(c) of the Internal Revenue Code of 1986, as amended (the "Code"), or otherwise treat such Preferential Coupons or PIK Coupons as distributions required to be included in income on a current basis or (2) the Series A-1 Convertible Preferred Stock as having any redemption premium within the meaning of Treasury Regulations Section 1.305-5(b) (and any corresponding provision of state or local law); except in each case as required by any of the following: (w) a change in relevant law occurring after the Initial Issue Date, (x) after the Initial Issue Date, the promulgation of relevant final U.S. Treasury Regulations addressing instruments similar to the Series A-1 Convertible Preferred Stock (from and after the effective date of such final regulations), (y) any amendment to the terms of this Certification of Designations that is made with the necessary consent of the holders of the Series A-1 Convertible Preferred Stock or (z) a "determination" within the meaning of section 1313(a) of the Code.

Section 19 Information Rights. The Company covenants that it shall furnish each holder of Series A-1 Convertible Preferred Stock (provided that any holder may waive the right to receive any information under this Section 19 (including any information constituting material non-public information) by providing written notice to the Company) who owns at least 50% of the aggregate of shares of Series A Convertible Preferred Stock and shares of Series A-1 Convertible Preferred Stock (including any shares of Series A Convertible Preferred Stock issued upon conversion of Series A-1 Preferred Stock pursuant to Section 10) that it owns as of the Initial Issue Date:

(a) Within thirty (30) days after the end of each calendar month during each fiscal year of the Company, a copy of the unaudited consolidated financial statements of the Company, consisting of a consolidated balance sheet as of the close of such month and related consolidated statements of income and cash flows for such month and from the beginning of such Fiscal Year to the end of such month, prepared in accordance with generally accepted accounting principles on a consistent basis, subject to the lack of footnote disclosure and year-end adjustments;

(b) Within the then applicable time periods under the Exchange Act, a copy of the unaudited consolidated financial statements of the Company for each of the first three fiscal quarters of the Company's fiscal year, consisting of a consolidated balance sheet as of the close of such quarter and related consolidated statements of income and cash flows for such quarter and from the beginning of such fiscal year to the end of such quarter, prepared in accordance with generally accepted accounting principles on a consistent basis, subject to the lack of footnote disclosure and year-end adjustments, which will be deemed delivered if such financial statements are filed with the Securities and Exchange Commission and made available on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in full without redaction;

(c) Within the then applicable time periods under the Exchange, a copy of its annual report, audited by a nationally recognized independent, certified public accounting firm, reasonably acceptable to the Board of Managers of the Operating LLC, including consolidated balance sheet and related consolidated statements of income, cash flows and members equity of the Operating LLC and its Subsidiaries for such fiscal year, with comparative figures for the preceding fiscal year, prepared in accordance with generally accepted accounting principles on a consistent basis, which will be deemed delivered if such financial statements are filed with the Securities and Exchange Commission and made available on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in full without redaction;

(d) At least thirty (30) days prior to the end of each fiscal year, a detailed annual consolidated operating budget and cash flow schedule that has been presented for approval to, and has been approved by, the Board of Directors, prepared on a monthly and annual basis for the Company and its Subsidiaries for the succeeding fiscal year (displaying anticipated statements of income and cash flows and balance sheets (the "Annual Budget")), and promptly, upon preparation thereof, any other significant budgets which the Company or any of its Subsidiaries prepares (including any revisions of such annual or other budgets); and within thirty (30) days after any monthly period in which there is a material deviation from the Annual Budget, a statement from the Company's chief executive officer or chief financial officer explaining the deviation and the actions the Company and its Subsidiaries have taken and propose to take with respect thereto; and

(e) the Company will, within 10 Business Days (or, if after using commercially reasonable efforts to schedule such call, at such later date as agreed to by the Holder Majority) after the date of the delivery of the financial statements pursuant to Section 11(b) above, hold a conference call or teleconference, at a time selected by the Company and reasonably acceptable to the Holder Majority, to review the financial results of the previous fiscal quarter of the Company; provided that no such call will be required if each holder of Series A-1 Convertible Preferred Stock was entitled to participate in a similar call with respect to the Financing Agreement or pursuant to the terms of any other indebtedness of the Company.

Section 20 Specific Performance. The Company and the holders of the Series A-1 Convertible Preferred Stock agree that the holders of the SeriesA-1 Convertible Preferred Stock, on the one hand, and the Company, on the other hand, would be irreparably damaged if any of the provisions of this Certificate of Designations are not performed in accordance with their specific terms by the Company, on the one hand, or the holders of the Series A-1 Convertible Preferred Stock, on the one hand, and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the Company or any holder of the Series A-1 Convertible Preferred Stock may be entitled, at law or in equity, the Company and such holders shall be entitled to injunctive relief to prevent breaches of the provisions of this Certificate of Designations and specifically to enforce the terms and provisions hereof.

Section 21 Corporate Opportunity; General Corporation Law. The Company waives, to the maximum extent permitted by law, the application of the doctrine of corporate opportunity, or any other analogous doctrine, and the provisions of Section 203 of the General Corporation Law, with respect to any holder of Series A-1 Convertible Preferred Stock or any member of the Board of Directors appointed thereby (and no polices of the Board of Directors will be deemed to contravene any such waiver with respect to the holders of Series A-1 Convertible Preferred Stock)

Section 22 Other Rights. The Series A-1 Convertible Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in this Certificate of Designations, the Securities Purchase Agreement, the LLC Agreement, any document referred to in the foregoing, or as provided by applicable law. For avoidance of doubt, none of the rights or preferences set forth in this Certificate of Designations pursuant to Section 4, Section 6(c), Section 11, Section 12 or Section 17 shall be applicable to any use of the proceeds of the offer and sale of the Series A-1 Convertible Preferred Stock pursuant to the Securities Purchase Agreement or in connection with any transaction contemplated by the Up-C Steps Memo (as defined in the Securities Purchase Agreement).

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by [ ], its [ ], this [ ] day of [ ], 2021.

XPONENTIAL FITNESS, INC.

By: /s/ [ ]
Name: [ ]
Title: [ ]

Exhibit A

FORM OF NOTICE OF CONVERSION

(To be Executed by the Holder
in Order to Convert 6.50% Series A-1 Convertible Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") 6.50% Series A-1 Convertible Preferred Stock (the "Series A-1 Convertible Preferred Stock"), of Xponential Fitness, Inc. (hereinafter called the "Corporation") into Class A Common Stock, par value $0.01 per share, of the Corporation (the "Class A Common Stock") according to the conditions of the Certificate of Designations of Series A-1 Convertible Preferred Stock (the "Certificate of Designations"), as of the date written below.

If Class A Common Stock is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto, if any. Each Series A-1 Convertible Preferred Stock Certificate (or evidence of loss, theft or destruction thereof) is attached hereto.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designations.

Date of Conversion:_____

Applicable Conversion Rate:_____

Shares of Series A-1 Convertible Preferred Stock to be Converted:_____

Shares of Class A
Common Stock to be Issued:_____

Signature:_____
Name:_____
Address:*_____
Fax No.:_____

* Address where Class A Common Stock and any other payments or certificates shall be sent by the Corporation.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of 6.50% Series A-1 Convertible Preferred Stock evidenced hereby to:

(Insert assignee's social security or taxpayer identification number, if any)

(Insert address and zip code of assignee)

and irrevocably appoints:

as agent to transfer the shares of 6.50% Series A-1 Convertible Preferred Stock evidenced hereby on the books of the Transfer Agent.

The agent may substitute another to act for him or her.

Date:

Signature:_____

(Sign exactly as your name in which your shares of Series A-1 Convertible Preferred Stock are registered)

Signature Guarantee:_____

(Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

Exhibit 10.12

SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT

OF
XPONENTIAL INTERMEDIATE HOLDINGS LLC
(a Delaware limited liability company)

[_____], 2021

THE UNITS REPRESENTED BY THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH UNITS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR AN EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

CERTAIN OF THE UNITS REPRESENTED BY THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT MAY ALSO BE SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER, VESTING PROVISIONS, REPURCHASE OPTIONS, OFFSET RIGHTS AND FORFEITURE PROVISIONS SET FORTH HEREIN AND/OR IN A SEPARATE AGREEMENT WITH THE HOLDER OF SUCH UNITS. A COPY OF SUCH AGREEMENT(S) MAY BE OBTAINED BY THE HOLDER OF SUCH UNITS UPON WRITTEN REQUEST AND WITHOUT CHARGE.

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SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
XPONENTIAL INTERMEDIATE HOLDINGS LLC
(a Delaware limited liability company)

This **SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT** (this "**Agreement**") **of XPONENTIAL INTERMEDIATE HOLDINGS LLC**, a Delaware limited liability company (the "**Company**"), is entered into as of [ ], 2021, by and among the Company, Xponential Fitness Inc., a Delaware corporation ("**Pubco**"), the Members executing this Agreement, and such other Persons who may become Members hereof from time to time, pursuant to the provisions of the Delaware Act and this Agreement.

W I T N E S S E T H:

WHEREAS, the Company was formed as a limited liability company under the Delaware Act pursuant to a certificate of formation, which was executed and filed with the Secretary of State of the State of Delaware on February 19, 2020;

WHEREAS, a Limited Liability Company Agreement dated as of February 19, 2020 (the "**Prior LLC Agreement**") was entered into with respect to the Company;

WHEREAS, H&W Franchise Holdings LLC ("**H&W FH**") was formed as a limited liability company under the Delaware Act pursuant to a certificate of formation, which was executed and filed with the Secretary of State of the State of Delaware on August 28, 2017;

WHEREAS, pursuant to the terms of the Reorganization Agreement, dated as of [ ], 2021, by and among the Company, Pubco and the Pre-IPO Holders (the "**Reorganization Agreement**"), the parties thereto have agreed to consummate a reorganization of the Company and to take the other actions contemplated in such Reorganization Agreement (collectively, the "**Reorganization**");

WHEREAS, pursuant to the Reorganization, H&W FH was merged with and into the Company ("**H&W Merger**") with the Company surviving and, pursuant thereto, limited liability company interests in H&W FH became limited liability company interests in the Company;

WHEREAS, the Company is intended to be a continuation of H&W FH for U.S. federal income tax purposes;

WHEREAS, Pubco and [ ] have entered into the Securities Purchase Agreement, dated as of [ ] (the "**Purchase Agreement**"), providing for the purchase and issuance of [ ] shares of Pubco Preferred Stock (the "**2021 Pubco Preferred Stock Issuance**") pursuant to the Certificate of Designations (as defined below);

WHEREAS, the Company and Pubco have entered into underwriting agreements with several underwriters providing for the offering of [ ] shares of Class A Common Stock pursuant to the IPO of Pubco;

WHEREAS, Pubco will use the proceeds received from the IPO and 2021 Pubco Preferred Stock Issuance to, among other things, (i) acquire Preferred Units and LLC Units from the Company, (ii) purchase LLC Units from certain Members of the Company and (iii) purchase the stock of LCAT Franchise Holdings, Inc. ("**LCAT**"), a Member that owns LLC Units of the Company;provided that in the event that the number of Preferred Units acquired from the Company does not equal the number of shares of Pubco Preferred Stock outstanding after the IPO, (x) Pubco will not acquire any LLC Units from the Company and (y) a portion of the LLC Units acquired from LCAT will be recapitalized into Preferred Units such that, immediately after such recapitalization (A) the number of Preferred Units held by Pubco equals the number of shares of Pubco Preferred Stock outstanding and (B) the number of LLC Units held by Pubco equals the number of shares of Class A Common Stock outstanding; and

WHEREAS, the parties listed on the signature pages hereto and listed on Schedule A (as defined below) represent all of the holders of interests in the Company as of the date hereof (the "**Members**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made and other good and valuable consideration, the Members hereto hereby agree to amend and restate the Prior LLC Agreement, as of the Effective Time, in its entirety as follows:

ARTICLE 1

DEFINITIONS AND USAGE

Section 1.01 Definitions.

(a) The following terms shall have the following meanings for the purposes of this Agreement:

"**Additional Member**" means any Person admitted as a Member of the Company pursuant toSection 3.03 in connection with the new issuance of Units to such Person.

"**Adjusted Capital Account**" means, with respect to any Member, the balance in such Member's Capital Account as of the end of the relevant Fiscal Year (or other applicable period) after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentence in Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Treasury RegulationsSections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury RegulationsSection 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year (or other applicable period), after giving effect to the adjustments in paragraphs (i) and (ii) in the definition of "Adjusted Capital Account."

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided that no Member nor any Affiliate of any Member shall be deemed to be an Affiliate of any other Member or any of its Affiliates solely by virtue of such Members' Units.

"**Applicable Law**" means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person or its assets, as amended unless expressly otherwise specified herein.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which banks are not authorized to be open for business in the State of California.

"**Capital Account**" means the capital account established and maintained for each Member pursuant to Section 5.02.

"**Capital Contribution**" means, with respect to any Member, the amount of money and the initial Carrying Value of any Property (other than money) contributed (or deemed to be contributed) to the capital of the Company by such Member.

"**Carrying Value**" means with respect to any Property (other than money) of the Company (or any entity that is treated as disregarded as being separate from the Company for federal income tax purposes), such Property's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Carrying Value of any such Property contributed by a Member to the Company shall be the gross fair market value of such Property, as reasonably determined by the Managing Member, provided that with respect to any Property contributed or deemed contributed prior to the date hereof by (A) LAG Fit, Inc., such fair market value was the amount as reasonably agreed upon by H&W Investco and LAG Fit, Inc.; and (B) any Class A-3 Member (as defined in the Prior LLC Agreement), such fair market value was the amount as reasonably agreed upon by H&W Investco and Majority Class A-3 Approval (as defined in the Prior LLC Agreement).

(ii) The Carrying Values of all such Properties shall be adjusted to equal their respective gross fair market values (taking Section 7701(g) of the Code into account), as reasonably determined by the Managing Member, at the time of any Revaluation required pursuant to Section 5.02(c), provided that if any Noncompensatory Option with respect to Units or other Equity Securities of the Company is outstanding, then Carrying Values will also be adjusted in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(h)(2).

(iii) The Carrying Value of any item of such Properties distributed to any Member shall be adjusted to equal the gross fair market value (taking Section 7701(g) of the Code into account) of such Property on the date of distribution as reasonably determined by the Managing Member.

(iv) The Carrying Values of such Properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Properties pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (vi) of the definition of "Net Income" and "Net Loss" or Section 5.04(b)(vi); provided, however, that Carrying Values shall not be adjusted pursuant to this paragraph (iv) to the extent that an adjustment pursuant to paragraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv).

(v) If the Carrying Value of such Property has been determined or adjusted pursuant to paragraph (i), (ii) or (iv), then such Carrying Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

"**Certificate**" means the Certificate of Formation of the Company filed with the Secretary of State of Delaware in accordance with the Delaware Act, as such Certificate may be amended from time to time.

"**Certificate of Designations**" means, as applicable, the Certificate of Designations of 6.50% Series A-1 Convertible Preferred Stock of PubCo and the Certificate of Designations of 6.50% Series A Convertible Preferred Stock of PubCo.

"**Class A Common Stock**" means Class A common stock, $0.01 par value per share, of Pubco.

"**Class B Common Stock**" means Class B common stock, $0.01 par value per share, of Pubco.

"**Class B Securities Purchase Agreements**" means the Class B Securities Purchase Agreements, dated as of the date hereof, by and among Pubco and each of the Pre-IPO Holders.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Company Minimum Gain**" means "partnership minimum gain," as defined in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"**Competitive Activity**" means (i) any business that competes with the business of the Company or any of its subsidiaries, or (ii) acquiring directly or through an Affiliate in the aggregate directly or beneficially, whether as a shareholder, partner, member or otherwise, any equity (including stock options or warrants, whether or not exercisable), voting or profit participation interests (collectively, "**Ownership Interests**") in a Competitive Enterprise (it being understood that this clause (ii) shall not apply to prohibit the holding of an Ownership Interest if (a) at the time of acquisition of such Ownership Interest, the Person in which such direct or indirect Ownership Interest is acquired is not a Competitive Enterprise and the Member is not aware at the time of such acquisition, after reasonable inquiry, that such Person has any plans to become a Competitive Enterprise or (b) such Ownership Interest is a passive ownership position of less than five percent (5%) in any company whose shares are publicly traded).

"**Competitive Enterprise**" means any Person or business enterprise (in any form, including without limitation as a corporation, partnership, limited liability company or other Person), or subsidiary, division, unit, group or portion thereof, whose primary business is engaging in a Competitive Activity (as reasonably determined by the Managing Member). For the sake of clarity, in the case of a subsidiary, division, unit, group or portion whose primary business is described above: (1) the larger business enterprise or Person owning such subsidiary, division, unit, group or portion shall not be deemed to be a Competitive Enterprise unless the primary business of such larger business enterprise or Person is engaged in a Competitive Activity and (2) the subsidiary, division, unit, group or portion whose primary business is engaging in a Competitive Activity shall be deemed a Competitive Enterprise.

["**Contribution and Exchange Agreements**" means the Contribution and Exchange Agreements, by and among the Company and certain of the Pre-IPO Holders.**]**

"**Control**" (including the terms "**controlling**" and "**controlled**"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

"**Covered Person**" means (i) each Member or an Affiliate thereof, in each case in such capacity, (ii) each officer, director, shareholder, member, partner, employee, representative, agent or trustee of a Member or an Affiliate thereof, in all cases in such capacity, and (iii) each officer, director, shareholder (other than any public shareholder of Pubco that is not a Member), member, partner, employee, representative, agent or trustee of the Managing Member, Pubco (in the event Pubco is not the Managing Member), the Company or an Affiliate controlled thereby, in all cases in such capacity.

"**Delaware Act**" means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 *et seq*, as may be amended from time to time.

"**Depreciation**" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Managing Member.

"**DGCL**" means the State of Delaware General Corporation Law, as amended from time to time.

"**Effective Time**" means a time that is substantially concurrent with, but immediately prior to, the closing of the IPO.

"**Equity Securities**" means, with respect to any Person, any (i) membership interests or shares of capital stock, (ii) equity, ownership, voting, profit or participation interests or (iii) similar rights or securities in such Person or any of its Subsidiaries, or any rights or securities convertible into or exchangeable for, options or other rights to acquire from such Person or any of its Subsidiaries, or obligation on the part of such Person or any of its Subsidiaries to issue, any of the foregoing.

"**Fiscal Year**" means the Company's fiscal year, which shall initially be the calendar year and which may be changed from time to time as determined by the Managing Member.

"**Governmental Authority**" means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

"**H&W Investco**" means H&W Investco, LP, a Delaware limited partnership.

"**Indebtedness**" means (a) all indebtedness for borrowed money (including capitalized lease obligations, sale-leaseback transactions or other similar transactions, however evidenced), (b) any other indebtedness that is evidenced by a note, bond, debenture, draft or similar instrument, (c) notes payable and (d) lines of credit and any other agreements relating to the borrowing of money or extension of credit.

"**Involuntary Transfer**" means any Transfer of Units by a Member resulting from (i) any seizure under levy of attachment or execution, (ii) any bankruptcy (whether voluntary or involuntary), (iii) any Transfer to a state or to a public officer or agency pursuant to any statute pertaining to escheat or abandoned property, (iv) any divorce or separation agreement or a final decree of a court in a divorce action or (v) death or permanent disability.

"**IPO**" means the initial underwritten public offering of Pubco.

"**IRS**" means the Internal Revenue Service of the United States.

"**Liens**" means any pledge, encumbrance, security interest, purchase option, conditional sale agreement, call or similar right.

"**LLC Unit**" means a common limited liability interest in the Company.

"**LLC Unit Percentage Interest**" means with respect to any Member, a fractional amount, expressed as a percentage: (i) the numerator of which is the aggregate number of LLC Units owned of record by such Member, and (ii) the denominator of which is the aggregate number of LLC Units issued and outstanding. The sum of the outstanding LLC Unit Percentage Interests of all Members shall at all times equal 100%.

"**LLC Unit Redemption Price**" means the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by The Wall Street Journal or its successor, for each of the three (3) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the date of Redemption (or the date of the Call Notice, as applicable), subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then the LLC Unit Redemption Price shall be determined in good faith by a committee of the board of directors of Pubco composed of a majority of the directors of Pubco that do not have an interest in the LLC Units being redeemed; provided that in the case of Pubco electing a Cash Settlement pursuant to Section 10.02, if Pubco issues Class A Common Stock in a substantially concurrent offering of shares of Class A Common Stock, the LLC Unit Redemption Price shall be the net proceeds (after deduction of any underwriters' discounts or commissions and brokers fees or commissions) from the sale by Pubco of a share of Class A Common Stock sold in connection with the related redemption of Redeemed Units.

"**Managing Member**" means (i) Pubco so long as Pubco has not withdrawn as the Managing Member pursuant to Section 7.02 and (ii) any successor thereof appointed as Managing Member in accordance with Section 7.02.

"**Member**" means any Person named as a Member of the Company on the Member Schedule and the books and records of the Company, as the same may be amended from time to time to reflect any Person admitted as an Additional Member or a Substitute Member, for so long as such Person continues to be a Member of the Company.

"**Member Nonrecourse Debt**" has the same meaning as the term "partner nonrecourse debt" in Treasury Regulations Section 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" means an amount with respect to each Member Nonrecourse Debt equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability (as defined in Treasury Regulation Section 1.752-1(a)(2)) determined in accordance with Treasury Regulation Section 1.704-2(i)(3).

"**Member Nonrecourse Deductions**" has the same meaning as the term "partner nonrecourse deductions" in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"**Net Income**" and "**Net Loss**" mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of "Net Income" and "Net Loss" shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition of "Net Income" and "Net Loss," shall be treated as deductible items;

(iii) In the event the Carrying Value of any Company asset is adjusted pursuant toparagraphs (ii) or (iii) of the definition of "Carrying Value," the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Carrying Value of the asset) or an item of loss (if the adjustment decreases the Carrying Value of the asset) from the disposition of such asset and shall be taken into account, immediately prior to the event giving rise to such adjustment, for purposes of computing Net Income and/or Net Loss;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Carrying Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(vii) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant toSection 5.04(b) or Section 5.04(c) shall not be taken into account in computing Net Income and Net Loss.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant toSection 5.04(b) and Section 5.04(c) shall be determined by applying rules analogous to those set forth in paragraphs (i) through (vi) above.

"**Noncompensatory Option**" means a non-compensatory option within the meaning of Treasury RegulationsSection 1.721-2(f) that is issued by the Company.

"**Non-Pubco Member**" means any Member that is not a Pubco Member.

"**Nonrecourse Deductions**" has the meaning set forth in Treasury RegulationsSections 1.704-2(b)(1) and 1.704-2(c).

"**Percentage Interest**" means with respect to any Member, a fractional amount, expressed as a percentage: (i) the numerator of which is the sum of (A) the number of LLC Units owned of record by such Member plus (B) the number of LLC Units that would be received upon a conversion of the Preferred Units owned of record by such Member and (ii) the denominator of which is the sum of (A) the total number of LLC Units issued and outstanding plus (B) the total number of LLC Units that would be received by Members holding Preferred Units upon a conversion of all Preferred Units issued and outstanding. The sum of the outstanding Percentage Interests of all Members shall at all times equal 100%.

"**Permitted Transferee**" means, other than with respect to Pubco,

(i) any Member;

(ii) in the case of any Member who is not a natural person, any Person that is an Affiliate of such Member or its beneficial owners; and

(iii) in the case of any Member who is a natural person:

(A) any Person to whom Units are Transferred from such Member (1) by will or the laws of descent and distribution or (2) by gift to the Member's spouse, the lineal descendant, sibling, parent, heir, executor, administrator, testamentary trustee, legatee or beneficiary without consideration of any kind;

(B) a trust, family partnership or estate planning vehicle that is for the exclusive benefit of such Member and/or its Permitted Transferees under clause (A) above; or

(C) any institution qualified as tax-exempt under Section 501(c)(3) of the Code.

"**Person**" means any individual, firm, corporation, partnership, limited liability company, trust, estate, joint venture, governmental authority or other entity.

"**Preferred Units**" means a preferred limited liability interest in the Company, with an initial fixed liquidation preference equal to the Fixed Liquidation Preference (as defined in the Certificate of Designation) of the Pubco Preferred Stock.

"**Pre-IPO Holders**" means each Member as of the Effective Time (after taking the Reorganization into account) other than Pubco.

"**Prime Rate**" means the rate of interest from time to time identified by JP Morgan Chase, N.A. as being its "prime" or "reference" rate.

"**Preferred Coupons**" means the Preferred Coupons as defined in the Certificate of Designations.

"**Profits Interest Agreement**" means, with respect to each Member who holds LLC Units received in exchange for Class A-2 Units and/or Class B Units in H&W FH, that certain Profits Interest Plan Award Agreement entered into between such Member and H&W FH, pursuant to which H&W FH granted such H&W FH units to such Member, as the same may be amended, restated or otherwise modified from time to time.

"**Property**" means an interest of any kind in any real, personal or intellectual (or mixed) property, including cash, and any improvements thereto, and shall include both tangible and intangible property.

"**Pubco Common Stock**" means all classes and series of common stock of Pubco, including the Class A Common Stock and Class B Common Stock.

"**Pubco Preferred Stock**" means the 6.50% Series A Convertible Preferred Stock and the 6.50% Series A-1 Convertible Preferred Stock of Pubco.

"**Pubco Member**" means (i) Pubco and (ii) any Subsidiary of Pubco (other than the Company and its Subsidiaries) that is or becomes a Member.

"**Pubco Tax Rate**" means the highest marginal tax rate applicable to Pubco, taking into account the character of the income (*e.g.*, ordinary income, qualified dividend income, or capital gains, as appropriate), the holding period of the assets disposed of, the year in which the taxable net income is recognized by the Company, and the deductibility of state and local income taxes at the time for federal income tax purposes and any limitations thereon, as reasonably determined by the Managing Member.

"**Quarterly Preferred Tax Liability**" means an amount equal to (i) the Pubco Tax Rate multiplied by (ii) the sum of (A) the estimated or actual taxable income of the Company, as determined for federal income tax purposes, allocated to Pubco pursuant to Section 5.04(a)(i) solely as a holder of Preferred Units, plus (B) the amount of, any "guaranteed payments" made to Pubco in respect of its Preferred Units designated as such under Section 5.03(f) (and as determined under Section 707(c) of the Code (other than guaranteed payments in respect of services performed by Pubco)) for the period to which the Quarterly Preferred Tax Liability relates and to the extent not previously taken into account in determining the Quarterly Preferred Tax Liability of Pubco, each as reasonably determined by the Managing Member.

"**Quarterly Tax Liability**" means, with respect to any Member holding LLC Units for any fiscal quarter, a reasonable estimate determined by the Managing Member of the product of: (i) the excess of (A) the amount of taxable income of the Company determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code will be included in taxable income) to be allocated to such Member with respect to such LLC Units for such fiscal quarter, determined without regard to any adjustments pursuant to Section 704(c) (with respect to property contributed to the Company), 734 or 743 of the Code, less (B) all taxable losses allocated to such Member with respect to such LLC Units by the Company in prior Fiscal Years to the extent not previously taken into account in determining the Quarterly Tax Liability of such Member for any fiscal quarter (in each case disregarding all taxable income and loss allocable to any taxable period or portion thereof ending on or prior to the effective time of the IPO), multiplied by (ii) the Tax Rate.

"**Redeemed LLC Units Equivalent**" means the product of (a) the Share Settlement, times (b) the LLC Unit Redemption Price.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, by and among Pubco, certain of the Pre-IPO Holders and certain holders of Pubco Preferred Stock.

"**Reorganization Date Capital Account Balance**" means, with respect to any Member, the positive balance in such Member's Capital Account as of immediately following the Reorganization, the amount or deemed value of which is set forth on the Member Schedule.

"**Reorganization Documents**" means the Reorganization Agreement and the documents referenced therein, this Agreement, the Class B Securities Purchase Agreements, the Tax Receivable Agreement, the Registration Rights Agreement and the Stockholders Agreement.

"**Reserves**" means, as of any date of determination, amounts allocated by the Managing Member, in its reasonable judgment, to reserves maintained for working capital of the Company, for contingencies of the Company, for operating expenses and debt reduction of the Company.

"**Restricted Person**" means (a) each Non-Pubco Member, and (b) in the case of a Non-Pubco Member that is an entity, each direct or indirect owner of Equity Securities of such Non-Pubco Member that agrees (by executing a joinder to this Agreement or other agreement with the Company or Pubco) to be a Restricted Person hereunder.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provision of future law.

"**Stockholders Agreement**" means the Stockholders Agreement, dated as of the date hereof, by and among each of thePre-IPO Holders and Pubco.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of Equity Securities or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof 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.

"**Substantial Ownership Requirement**" means the beneficial ownership (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act) by the Pre-IPO Holders and any Permitted Transferees, collectively, of shares of common stock of Pubco representing at least ten percent (10%) of the issued and outstanding shares of the common stock of Pubco.

"**Substitute Member**" means any Person admitted as a Member of the Company pursuant to Section 3.03 in connection with the Transfer of then-existing Units to such Person.

"**Tax Rate**" means the highest marginal tax rates for an individual or corporation (whichever is higher) that is resident in Los Angeles, California or New York, New York (whichever is higher), taking into account the character of the income (*e.g.*, ordinary income, qualified dividend income, or capital gains, as appropriate), the holding period of the assets disposed of, the year in which the taxable net income is recognized by the Company, and the deductibility of state and local income taxes at the time for federal income tax purposes and any limitations thereon including pursuant to Section 68 of the Code, but without taking into account the alternative minimum tax or any limitations on deductions or separate tax attributes that may be applicable to a Member based on such Member's particular tax situation or attributes, which Tax Rate shall be the same for all Members.

"**Tax Receivable Agreement**" means the Tax Receivable Agreement, dated as of the date hereof, by and among Pubco and the other parties thereto.

"**Trading Day**" means a day on which the principal U.S. securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

"**Transfer**" means any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, direct or indirect, in whole or in part, by operation of law or otherwise, and shall include all matters deemed to constitute a Transfer under ARTICLE 8. The terms "**Transferred**," "**Transferring**," "**Transferor**," "**Transferee**" and "**Transferable**" have meanings correlative to the foregoing.

"**Treasury Regulations**" mean the final or temporary United States Federal Income Tax Regulations promulgated under the Code, as amended from time to time.

"**Units**" means LLC Units, Preferred Units or any other class of limited liability interests in the Company designated by the Company after the date hereof in accordance with this Agreement; provided that any type, class or series of Units shall have the designations, preferences and/or special rights set forth or referenced in this Agreement, and the membership interests of the Company represented by such type, class or series of Units shall be determined in accordance with such designations, preferences and/or special rights.

"**Unvested LLC Unit**" means any LLC Unit that is not vested pursuant to and in accordance with the Profits Interest Agreement entered into with the holder of such LLC Unit.

(b) Each of the following terms is defined in the Section set forth opposite such term:

"Agreement"	Preamble
"Cash Settlement"	Section 10.01(b)
"Company"	Preamble
"Company Parties"	Section 9.01(b)
"Confidential Information"	Section 13.11(b)
"Contribution Notice"	Section 10.01(b)
"Controlled Entities"	Section 11.02(e)
"Designated Individual"	Section 6.01(a)
"Direct Exchange"	Section 10.03(a)
"Dispute"	Section 14.01
"Dissolution Event"	Section 12.01(c)
"Economic Pubco Security"	Section 4.01(a)
"Exchange Election Notice"	Section 10.03(a)
"Expenses"	Section 11.02(e)
"Final Tax Distribution Amount"	Section 5.03(e)(ii)
"GAAP"	Section 3.04(b)
"Indemnification Sources"	Section 11.02(e)
"Indemnitee-Related Entities"	Section 11.02(e)(i)
"Initiating Party"	Section 14.01
"Jointly Indemnifiable Claims"	Section 11.02(e)(ii)
"Member Parties"	Section 13.11
"Member Schedule"	Section 3.01(b)
"NOPPA"	Section 6.01(d)
"Officers"	Section 7.05(a)
"Panel"	Section 14.01
"Partnership Representative"	Section 6.01
"Prior LLC Agreement"	Recitals
"Pubco"	Preamble
"Pubco Offer"	Section 10.04(a)

"Redeemed Units"	Section 10.01(a)
"Redeeming Member"	Section 10.01(a)
"Redemption"	Section 10.01(a)
"Redemption Date"	Section 10.01(a)
"Redemption Notice"	Section 10.01(a)
"Redemption Right"	Section 10.01(a)
"Reorganization"	Recitals
"Reorganization Agreement"	Recitals
"Responding Party"	Section 14.01
"Retraction Notice"	Section 10.01(b)
"Revaluation"	Section 5.02(c)
"Revised Partnership Audit Procedures"	Section 6.01
"Share Settlement"	Section 10.01(b)
"Tax Distribution Date"	Section 5.03(e)
"Tax Distributions"	Section 5.03(e)
"Transferor Member"	Section 5.02(b)
"Withholding Advances"	Section 5.06(b)
"Unvested Distribution Amount"	Section 5.03(b)(iii)

Section 1.02 Other Definitional and Interpretative Provisions. The words "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Schedules and Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. "Writing," "written" and comparable terms refer to printing, typing

and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to "law," "laws" or to a particular statute or law shall be deemed also to include any Applicable Law. As used in this Agreement, all references to "majority in interest" and phrases of similar import shall be deemed to refer to such percentage or fraction of interest based on the Percentage Interests of the Members subject to such determination. Unless otherwise expressly provided herein, when any approval, consent or other matter requires any action or approval of any group of Members, including any holders of any class of Units, such approval, consent or other matter shall require the approval of a majority in interest of such group of Members. Except to the extent otherwise expressly provided herein, all references to any Member shall be deemed to refer solely to such Person in its capacity as such Member and not in any other capacity.

ARTICLE 2

THE COMPANY

Section 2.01 Formation. The Company has been organized as a Delaware limited liability company pursuant to the provisions of the Delaware Act and upon the terms and conditions set forth in this Agreement. The Members hereby agree that the Company and its Subsidiaries shall be governed by the terms and conditions of this Agreement and, except as provided herein, the Delaware Act.

Section 2.02 Name. The name of the Company shall be "Xponential Intermediate Holdings LLC" and all business of the Company shall be conducted in such name or such other name as the Managing Member shall determine, provided that the Managing Member may change the name of the Company to such other name as the Managing Member shall determine, and shall have the authority to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Managing Member, may be necessary or advisable to effect such change.

Section 2.03 Term. The Company commenced on February 20, 2020, the date on which the Certificate was filed in the office of the Secretary of State of Delaware in accordance with the Delaware Act, and shall have perpetual existence until it is wound up and liquidated and its business is completed as provided in ARTICLE 12.

Section 2.04 Registered Agent and Registered Office.

(a) The Certificate has been filed in the office of the Secretary of State of Delaware in accordance with the provisions of the Delaware Act. The Managing Member shall be responsible for, and shall take any and all other actions reasonably necessary to perfect and maintain, the status of the Company under the laws of the State of Delaware, including causing

amendments to the Certificate to be filed whenever required by the Delaware Act. Such Certificate and amendments thereto will be executed by any Person authorized by the Managing Member to do so.

(b) The Managing Member shall be responsible for, and shall cause to be executed and filed, such forms or certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company under the laws of any other states or jurisdictions in which the Company engages in business.

(c) The registered agent for service of process on the Company in the State of Delaware, and the address of such registered agent, shall be Registered Agents Solutions, Inc., 1679 S. Dupont Hwy, Suite 100, Dover, Delaware 19901. The Managing Member may change the registered agent and appoint successor registered agents.

Section 2.05 Purposes. The purpose and business of the Company shall be to engage in any lawful act or activity for which limited liability companies may be formed under the Delaware Act and engaging in any and all activities necessary, customary, convenient or incidental to the foregoing.

Section 2.06 Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate or advisable to or for the furtherance of the purposes set forth in Section 2.05.

Section 2.07 No State Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in Section 2.08, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise.

Section 2.08 Partnership Tax Status. The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes that is a continuation of H&W FH. The Members and the Company agree to take such actions as may be necessary to receive and maintain such treatment and refrain from taking any actions inconsistent therewith. Each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

Section 2.09 Regulation of Internal Affairs. The internal affairs of the Company and the conduct of its business shall be regulated by this Agreement, and to the extent not provided for herein, shall be determined by the Managing Member.

Section 2.10 Ownership of Property. Legal title to all Property, conveyed to, or held by the Company or its Subsidiaries shall reside in the Company or its Subsidiaries (as applicable) and shall be conveyed only in the name of the Company or its Subsidiaries (as applicable), and no Member or any other Person, individually, shall have any ownership of such Property.

Section 2.11 Subsidiaries. The Company shall cause the business and affairs of each of the Subsidiaries to be managed by the Managing Member in accordance with and in a manner consistent with this Agreement.

Section 2.12 Qualification in Other Jurisdictions. The Managing Member shall execute, deliver and file certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the jurisdictions in which the Company may wish to conduct business. In those jurisdictions in which the Company may wish to conduct business in which qualification or registration under assumed or fictitious names is required or desirable, the Managing Member shall cause the Company to be so qualified or registered in compliance with Applicable Law.

ARTICLE 3

UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS

Section 3.01 Units; Admission of Members.

(a) Each Member's interest in the Company, including such Member's interest, if any, in the capital, income, gain, loss, deduction and expense of the Company and the right to vote, if any, on certain Company matters as provided in this Agreement, shall be represented by Units. The ownership by a Member of Units shall entitle such Member to allocations of profits and losses and other items and distributions of cash and other property as is set forth in ARTICLE 5. Units shall be issued innon-certificated form.

(b) Effective upon the Reorganization, pursuant to **[**Section 2.1(b)(i)-(iii)**]** of the Reorganization Agreement, Pubco has been admitted to the Company as the Managing Member and as consideration in the H&W Merger, each Pre-IPO Holder was issued LLC Units in exchange for their H&W FH interests. Such information will be recorded by the Company in a schedule setting forth the names and the number of LLC Units owned by each Member (the "**Member Schedule**") as set forth on Exhibit A attached hereto, which shall be maintained by the Managing Member on behalf of the Company in accordance with this Agreement. Notwithstanding anything to the contrary contained herein or in the Delaware Act, neither the Managing Member nor the Company shall be required to disclose an unredacted Member Schedule to any Non-Pubco Member, or any other information showing the identity of the other Non-Pubco Members or the number and class of Units or shares of Class B Common Stock owned by anotherNon-Pubco Member. For each Non-Pubco Member, the Company shall provide such Member, upon request, a redacted copy of the Member Schedule revealing only such Member's Units, the total number of issued and outstanding Units, and such Member's LLC Unit Percentage Interest. When any Units or other Equity Securities of the Company are issued, repurchased, redeemed, converted or Transferred in accordance with this Agreement, the Member Schedule shall be amended by the Managing Member to reflect such issuance, repurchase, redemption or Transfer, the admission of additional or substitute Members and the resulting LLC Unit Percentage Interest, as applicable, of each Member. Following the date hereof, no Person shall be admitted as a Member and no additional Units shall be issued except as expressly provided herein.

(c) In connection with the Reorganization and following the 2021 Pubco Preferred Stock Issuance and the IPO, Pubco will contribute to the Company a portion of the net proceeds received from the IPO and 2021 Pubco Preferred Stock Issuance in exchange for Preferred Units and LLC Units; provided that in the event that the number of Preferred Units issued to Pubco in exchange for the contribution of proceeds pursuant to this Section 3.01(c) does not equal the number of shares of Pubco Preferred Stock outstanding after the IPO, (x) Pubco will not acquire any LLC Units from the Company and (y) a portion of the LLC Units acquired from LCAT will be recapitalized into Preferred Units such that, immediately after such recapitalization, (A) the total number of Preferred Units held by Pubco equals the number of shares of Pubco Preferred Stock outstanding and (B) the number of LLC Units held by Pubco equals the number of shares of Class A Common Stock outstanding.

(d) Any subdivision (by stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of Class A Common Stock will be accompanied by an identical subdivision or combination, as applicable, of LLC Units. Subject Section 3.02, any subdivision (by stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the Pubco Preferred Stock will be accompanied by an identical subdivision or combination, as applicable, of Preferred Units.

(e) Subject to Section 3.02, the Managing Member may cause the Company to authorize and issue from time to time such other Units or other Equity Securities of any type, class or series and having the designations, preferences and/or special rights as may be determined by the Managing Member. Such Units or other Equity Securities may be issued pursuant to such agreements as the Managing Member shall approve, including with respect to Persons employed by or otherwise performing services for the Company or any of its Subsidiaries, other equity compensation agreements, options or warrants. When any such other Units or other Equity Securities are authorized and issued, the Member Schedule and this Agreement shall be amended by the Managing Member to reflect such additional issuances and resulting dilution.

Section 3.02 Rights of Preferred Units. The Preferred Units will have the following rights, preferences and privileges and shall be subject to the following duties and obligations:

(a) General Matters; Ranking. Each Preferred Unit will be identical in all respects to every other Preferred Unit. The Preferred Units, with respect to distributions, including upon the liquidation, winding-up or dissolution, as applicable, of the Company, will rank (i) senior to each class or series of LLC Units, (ii) on parity with each class or series of parity preferred units in the Company (if any), (iii) junior to each class or series of senior units in the Company (if any) and (iv) junior to the Company's existing and future indebtedness and other liabilities.

(b) Distributions. Pubco shall be entitled to receive distributions pursuant to Section 5.03(b) in respect of the Preferred Units in an amount equal to the amount of cash distributed in respect of Pubco Preferred Stock, including Preferred Coupons, in a manner that mirrors the rights of the holders of Pubco Preferred Stock under the Certificate of Designations. In the event of any voluntary or involuntary liquidation, winding-up or dissolution of the Company, Pubco will be entitled to receive liquidating distributions in respect of the Preferred Units in the manner set forth in Section 12.02(b)(ii).

(c) Voting Rights. Except as provided in the following sentence, holders of Preferred Units will not be entitled to vote on any matters requiring the approval or vote of the Members or holders of Units, except as required by applicable law. Notwithstanding any other provision of this Agreement, in addition to all other requirements imposed by the Delaware Act, and all other voting rights granted under this Agreement, the affirmative vote of the holders of a majority of the outstanding Preferred Units, voting separately as a class based upon one vote per Preferred Unit, will be necessary on any matter that (i) adversely affects any of the rights, preferences and privileges of the Preferred Units or (ii) amends or modifies any of the terms of the Preferred Units.

(d) Conversion. Each time that a share of Pubco Preferred Stock is converted into shares of Class A Common Stock, an equal number of Preferred Units will automatically convert (without any further action of the Company or Pubco) into the same number of LLC Units as such shares of Class A Common Stock. For example, if 5,000 shares of Pubco Preferred Stock are converted into 45,000 shares of Class A Common Stock, then 5,000 Preferred Units will automatically convert into 45,000 LLC Units.

(e) Repurchase and Redemption. Immediately prior to the time that a share of Pubco Preferred Stock is to be repurchased or redeemed by Pubco, the Company shall repurchase or redeem an equal number of Preferred Units in exchange for the same consideration that is to be paid by Pubco in the repurchase or redemption of the Pubco Preferred Stock. For example, if 100,000 shares of Pubco Preferred Stock are to be repurchased by Pubco in exchange for $3,000,000 in cash and 400,000 shares of Class A Common Stock, then 100,000 Preferred Units will be repurchased by the Company from Pubco in exchange for $3,000,000 in cash and 400,000 LLC Units.

(f) Exceptions. Notwithstanding Section 3.02(d) and Section 3.02(e), no repurchase, redemption or conversion will be effected to the extent such repurchase, redemption or conversion would render the Company insolvent or violate Applicable Law or any restrictions contained in any Agreement to which the Company is a party. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Notwithstanding anything contained in this Agreement to the contrary, in the event that any repurchase, redemption or conversion described herein would result in a default under any applicable financing documents of the Company or any of its subsidiaries (as applicable, a "Prohibition Event"), commencement of the applicable repurchase, redemption or conversion shall be delayed until the Prohibition Event ceases to exist, provided, in no event shall the period of such delay exceed 180 days.

(g) Tax Treatment. It is intended that the conversion of the Preferred Units into LLC Units or the redemption of the Preferred Units, as applicable, will be treated as the exercise of a Noncompensatory Option or, in the case of a redemption, in a similar manner as the Managing Member may determine in its sole discretion.

(h) Shortfall Event. Notwithstanding anything herein to the contrary and for the avoidance of doubt, upon the occurrence of a liquidation, bankruptcy, insolvency proceeding, winding up, reorganization, other insolvency proceeding or dissolution of the Company or Pubco, or a mandatory redemption of the Pubco Preferred Stock, or Sale of the Company (as defined in the Certificate of Designation), for so long as a Shortfall Event (as defined in the Purchase Agreement) has occurred and is continuing, the Company shall not make any distributions or other payments to the holders of LLC Units or other junior equity interests of the Company until the maximum amount of any and all amounts owed to Pubco on the Preferred Units and/or for any expenses, liabilities or other obligations described in Section 13.01 of this Agreement have been distributed, indemnified, reimbursed or otherwise paid in full. In addition, each Member and the Company agrees that Pubco shall have the right to specifically enforce the provisions of this Section 3.02(h) through use of any remedy to which such parties are entitled at law or in equity.

Section 3.03 Substitute Members and Additional Members.

(a) No Transferee of any Units or Person to whom any Units are issued pursuant to this Agreement shall be admitted as a Member hereunder or acquire any rights hereunder, including any voting rights or the right to receive distributions and allocations in respect of the Transferred or issued Units, as applicable, unless (i) such Units are Transferred or issued in compliance with the provisions of this Agreement **[**(including ARTICLE 8 and issuances pursuant to the Contribution and Exchange Agreements)**,]** (ii) such Transferee or recipient shall have executed and delivered to the Company such instruments as the Managing Member deems necessary or desirable, in its reasonable discretion, to effectuate the admission of such Transferee or recipient as a Member and to confirm the agreement of such Transferee or recipient to be bound by all the terms and provisions of this Agreement, (iii) the Managing Member shall have received the opinion of counsel, if any, required by Section 3.03(b) in connection with such Transfer and (iv) all necessary instruments reflecting such Transfer and/or admission shall have been filed in each jurisdiction in which such filling is necessary in order to qualify the company to conduct business or to preserve the limited liability of the Members. Upon complying with the immediately preceding sentence, without the need for any further action of any Person, a Transferee or recipient shall be deemed admitted to the Company as a Member. A Substitute Member shall enjoy the same rights, and be subject to the same obligations, as the Transferor; provided that such Transferor shall not be relieved of any obligation or liability hereunder arising prior to the consummation of such Transfer but shall be relieved of all future obligations with respect to the Units so Transferred. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission of a Substitute Member or Additional Member. In the event of any admission of a Substitute Member or Additional Member pursuant to this Section 3.03(a), this Agreement shall be deemed amended to reflect such admission, and any formal amendment of this Agreement (including the Member Schedule) in connection therewith shall only require execution by the Company and such Substitute Member or Additional Member, as applicable, to be effective.

(b) As a further condition to any Transfer of all or any part of a Member's Units, the Managing Member may, in its discretion, require a written opinion of counsel to the transferring Member reasonably satisfactory to the Managing Member, obtained at the sole expense of the transferring Member, reasonably satisfactory in form and substance to the Managing Member, as to such matters as are customary and appropriate in transactions of this

type, including, without limitation (or, in the case of any Transfer made to a Permitted Transferee, limited to an opinion) to the effect that such Transfer will not result in a violation of the registration or other requirements of the Securities Act or any other federal or state securities laws. No such opinion, however, shall be required in connection with a Transfer made pursuant to ARTICLE 10 of this Agreement.

(c) If a Member shall Transfer all (but not less than all) of its Units, the Member shall thereupon cease to be a Member of the Company.

(d) All reasonable costs and expenses incurred by the Managing Member and the Company in connection with any Transfer of a Member's Units, including any filing and recording costs and the reasonable fees and disbursements of counsel for the Company, shall be paid by the transferring Member. In addition, the transferring Member hereby indemnifies the Managing Member and the Company against any losses, claims, damages or liabilities to which the Managing Member, the Company, or any of their Affiliates may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Member or such transferee in connection with such Transfer.

(e) In connection with any Transfer of any portion of a Member's Units pursuant toARTICLE 10 of this Agreement, the Managing Member shall cause the Company to take any action as may be required under ARTICLE 10 of this Agreement or requested by any party thereto to effect such Transfer promptly.

Section 3.04 Tax and Accounting Information.

(a) Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Member in accordance with Applicable Law and with accounting methods followed for federal income tax or other applicable tax purposes. In making such decisions, the Managing Member may rely upon the advice of the independent accountants of the Company.

(b) Records and Accounting Maintained. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in all material respects in accordance with United States generally accepted accounting principles as in effect from time to time ("**GAAP**"). The Fiscal Year of the Company shall be used for financial reporting and for federal income tax purposes.

(c) Financial Reports.

(i) The books and records of the Company shall be audited as of the end of each Fiscal Year by the same accounting firm that audits the books and records of Pubco (or, if such firm declines to perform such audit, by an accounting firm selected by the Managing Member).

(ii) In the event neither Pubco nor the Company is required to file an annual report on Form10-K or quarterly report on Form 10-Q, the Company shall deliver, or cause to be delivered, the following to Pubco and each of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met:

(A) not later than ninety (90) days after the end of each Fiscal Year of the Company, a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and the related statements of operations and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous year, all in reasonable detail; and

(B) not later than forty five (45) days or such later time as permitted under applicable securities law after the end of each of the first three fiscal quarters of each Fiscal Year, the unaudited consolidated balance sheet of the Company and its Subsidiaries, and the related statements of operations and cash flows for such quarter and for the period commencing on the first day of the Fiscal Year and ending on the last day of such quarter.

(d) Tax Returns.

(i) The Company shall timely prepare or cause to be prepared by an accounting firm selected by the Managing Member all federal, state, local and foreign tax returns (including information returns) of the Company and its Subsidiaries, which may be required by a jurisdiction in which the Company and its Subsidiaries operate or conduct business for each year or period for which such returns are required to be filed and shall cause such returns to be timely filed. Upon request of any Member, the Company shall furnish to such Member a copy of each such tax return.

(ii) The Company shall furnish to each Member (a) as soon as reasonably practical after the end of each Fiscal Year and in any event by June 1 of the subsequent Fiscal Year, all information concerning the Company and its Subsidiaries required for the preparation of tax returns of such Members (or any beneficial owner(s) of such Member), including a report (including IRS and any applicable state Schedule K-1s), indicating each Member's share of the Company's taxable income, gain, credits, losses and deductions for such year, in sufficient detail to enable such Member to prepare its federal, state and other income tax returns; provided that estimates of such information believed by the Managing Member in good faith to be reasonable shall be provided by April 1 of the subsequent Fiscal Year, (b) as soon as reasonably possible after the close of the relevant fiscal period, but in no event later than ten (10) days prior to the date an estimated tax payment is due, such information concerning the Company as is required to enable such Member (or any beneficial owner of such Member) to pay estimated taxes and (c) as soon as reasonably possible after a request by such Member, such other information concerning the Company and its Subsidiaries that is reasonably requested by such Member for compliance with its tax obligations (or the tax obligations of any beneficial owner(s) of such Member) or for tax planning purposes.

(e) Inconsistent Positions. No Member shall take a position on such Member's income tax return with respect to any item of Company income, gain, deduction, loss or credit that is different from the position taken on the Company's income tax return with respect to such item unless such Member notifies the Company of the different position the Member desires to take and the Company's regular tax advisors, after consulting with the Member, are unable to provide an opinion that (after taking into account all of the relevant facts and circumstances) the arguments in favor of the Company's position outweigh the arguments in favor of the Member's position.

Section 3.05 Books and Records. The Company shall keep full and accurate books of account and other records of the Company at its principal place of business. For so long as the Substantial Ownership Requirement is met, each Non-Pubco Member shall have any right to inspect the books and records of Pubco, the Company or any of its Subsidiaries; provided that (i) such inspection shall be at reasonable times and upon reasonable prior notice to the Company, but not more frequently than once per calendar quarter and (ii) neither Pubco, the Company nor any of its Subsidiaries shall be required to disclose (x) any information the Managing Member determines to be competitively sensitive, (y) any privileged information of Pubco, the Company or any of its Subsidiaries so long as the Company has used commercially reasonable efforts to enter into an arrangement pursuant to which it may provide such information to the Non-Pubco Members, as the case may be, without the loss of any such privilege, or (z) the Member Schedule or related information described in Section 3.01(b).

ARTICLE 4

PUBCO OWNERSHIP; RESTRICTIONS ON PUBCO STOCK

Section 4.01 Pubco Ownership.

(a) Except as otherwise determined by Pubco, if at any time Pubco issues one or more shares of Class A Common Stock, one or more shares of Pubco Preferred Stock, or any other Equity Security of Pubco entitled to any economic rights (including in the IPO) with respect to Pubco (excluding Class B Common Stock and any other Equity Security of Pubco not entitled to any economic rights with respect thereto) (an "**Economic Pubco Security**"), then—

(i) the Company shall issue to Pubco (A) one LLC Unit per share of Class A Common Stock issued by Pubco (if Pubco issues one or more shares of Class A Common Stock), (B) one Preferred Unit per share of Pubco Preferred Stock issued by Pubco (if Pubco issues one or more shares of Pubco Preferred Stock) or (C) such other Equity Security of the Company (if Pubco issues an Economic Pubco Security other than Class A Common Stock or Pubco Preferred Stock) corresponding to the Economic Pubco Security with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Economic Pubco Security; and

(ii) Pubco shall make a Capital Contribution to the Company of the net proceeds received by Pubco with respect to the corresponding Economic Pubco Security, if any;

provided, however, that if Pubco issues any Economic Pubco Securities and some or all of the net proceeds are used to fund the redemption, repurchase or other acquisition of shares of Class A Common Stock or Pubco Preferred Stock for which Pubco would be permitted a distribution pursuant to Section 5.03(c), then Pubco shall not be required to transfer such net proceeds to the Company to the extent such net proceeds are used or will be used to fund such redemption, repurchase or other acquisition, provided, further that if Pubco issues any shares of Class A Common Stock (including in the IPO) in order to purchase or fund the purchase from a Non-Pubco

Member of a number of LLC Units or to purchase or fund the purchase of shares of Class A Common Stock, in each case equal to the number of shares of Class A Common Stock issued, then the Company shall not issue any new LLC Units in connection therewith and Pubco shall not be required to transfer such net proceeds to the Company (it being understood that such net proceeds shall instead be transferred to such Non-Pubco Member or transferor of Class A Common Stock, as applicable, as consideration for such purchase).

(b) For the avoidance of doubt, this ARTICLE 4 shall apply to the issuance and distribution to holders of shares of Pubco Common Stock of rights to purchase Equity Securities of Pubco under a "poison pill" or similar shareholders rights plan (it also being understood that upon redemption or exchange of LLC Units (including any such right to purchase LLC Units in the Company) for shares of Class A Common Stock, such Class A Common Stock will be issued together with a corresponding right to purchase Equity Securities of Pubco).

(c) If at any time Pubco issues one or more shares of Class A Common Stock in connection with an equity incentive program, whether such share(s) or other equity are issued upon exercise of an option, settlement of a restricted stock unit, as restricted stock or otherwise, then the Company shall issue to Pubco a corresponding number of LLC Units; provided that Pubco shall be required to concurrently contribute the net proceeds (if any) received by Pubco from or otherwise in connection with such corresponding issuance of one or more shares of Class A Common Stock, including the exercise price of any option exercised, to the Company. If any such shares of Class A Common Stock so issued by Pubco in connection with an equity incentive program are subject to vesting or forfeiture provisions, then the LLC Units that are issued by the Company to Pubco in connection therewith in accordance with the preceding provisions of this Section 4.01(c) shall be subject to vesting or forfeiture on the same basis as the corresponding shares of Class A Common Stock. If any of such shares of Class A Common Stock vest or are forfeited, then a corresponding number of the LLC Units issued by the Company in accordance with the preceding provisions of this Section 4.01(c) shall automatically vest or be forfeited. Any cash or property held by either Pubco or the Company or on either's behalf in respect of dividends paid on restricted Class A Common Stock that fails to vest shall be returned to the Company upon the forfeiture of such restricted Class A Common Stock.

Section 4.02 Restrictions on Pubco Stock.

(a) Except as otherwise determined by the Managing Member in accordance withSection 4.02(g), (i) the Company may not issue any additional LLC Units to any Pubco Member unless substantially simultaneously therewith a Pubco Member issues or sells an equal number of shares of Class A Common Stock to another Person, (ii) the Company may not issue any additional LLC Units to any Person (other than any Pubco Member) unless simultaneously therewith Pubco issues or sells an equal number of shares of Class B Common Stock to such Person, (iii) subject to Section 3.02, the Company may not issue any Preferred Units to a Pubco Member unless substantially simultaneously therewith a Pubco Member issues or sells an equal number of shares of Pubco Preferred Stock to another Person and (iv) the Company may not issue any other Equity Securities of the Company to any Pubco Member unless substantially simultaneously therewith a Pubco Member issues or sells to another Person an equal number of shares of a new class or series of Equity Securities of Pubco with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of the Company.

(b) Except as otherwise determined by the Managing Member in accordance with Section 4.02(g):

(i) A Pubco Member may not redeem, repurchase or otherwise acquire any shares of Class A Common Stock unless substantially simultaneously therewith the Company redeems, repurchases or otherwise acquires from a Pubco Member an equal number of LLC Units for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of LLC Units for no consideration).

(ii) A Pubco Member may not redeem, repurchase or otherwise acquire any shares of Pubco Preferred Stock unless substantially simultaneously therewith the Company redeems, repurchases or otherwise acquires from a Pubco Member an equal number of Preferred Units for the same price per security (or, if Pubco uses funds received from distributions from the Company or**]** the net proceeds from an issuance of Pubco Preferred Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of Preferred Units for no consideration).

(iii) A Pubco Member may not redeem, repurchase or otherwise acquire any Economic Pubco Securities other than Class A Common Stock or Pubco Preferred Stock unless substantially simultaneously therewith the Company redeems or repurchases from a Pubco Member an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) or other economic rights as those of such Equity Securities of Pubco for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of the same class and type of Economic Pubco Security, then the Company shall cancel an equal number of its corresponding Equity Securities for no consideration).

(c) Except as otherwise determined by the Managing Member in accordance with Section 4.02(g), (A) the Company may not redeem, repurchase or otherwise acquire LLC Units from a Pubco Member unless substantially simultaneously therewith a Pubco Member redeems, repurchases or otherwise acquires an equal number of shares of Class A Common Stock for the same price per security from holders thereof (except that if the Company cancels LLC Units for no consideration as described in Section 4.02(b)(i), then the price per security need not be the same), (B) the Company may not redeem, repurchase or otherwise acquire LLC Units from a Pubco Member unless substantially simultaneously therewith a Pubco Member redeems, repurchases or otherwise acquires an equal number of shares of Class A Common Stock for the same price per security from holders thereof (except that if the Company cancels Preferred Units for no consideration as described in Section 4.02(b)(i), then the price per security need not be the same)and (C) the Company may not redeem, repurchase or otherwise acquire any Equity Securities of the Company other than LLC Units or Preferred Units from a Pubco Member unless substantially simultaneously therewith a Pubco Member redeems, repurchases or otherwise

acquires for the same price per security an equal number of Economic Pubco Securities of a corresponding class or series with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) and other economic rights as those of such Equity Securities of Pubco (except that if the Company cancels Equity Securities for no consideration as described in Section 4.02(b)(iii), then the price per security need not be the same). Notwithstanding the immediately preceding sentence, to the extent that any consideration payable to a Pubco Member in connection with the redemption or repurchase of any shares or other Equity Securities of Pubco consists (in whole or in part) of shares or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then the redemption or repurchase of the corresponding Units or other Equity Securities of the Company shall be effectuated in an equivalent manner (except if the Company cancels Units or other Equity Securities for no consideration as described in Section 4.02(b)(i), Section 4.02(b)(ii), or Section 4.02(b)(iii)).

(d) The Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding LLC Units unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Pubco Common Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Pubco Common Stock unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding LLC Units, with corresponding changes made with respect to any other exchangeable or convertible securities

(e) The Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Preferred Units unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Pubco Preferred Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Pubco Preferred Stock unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Preferred Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

(f) The Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of any outstanding Equity Security of the Company (other than LLC Units or Preferred Units) that may be issued unless accompanied by a substantively identical subdivision or combination, as applicable, of any outstanding Pubco Economic Security (other

than Class A Common Stock or Preferred Common Stock) that is intended to mirror the economics of such Equity Security of the Company, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of any such Pubco Economic Security unless accompanied by a substantively identical subdivision or combination, as applicable, of any such Equity Security of the Company, with corresponding changes made with respect to any other exchangeable or convertible securities.

(g) Notwithstanding anything to the contrary in this ARTICLE 4:

(i) if at any time the Managing Member shall determine that any debt instrument of Pubco, the Company or any of their Subsidiaries shall not permit Pubco or the Company to comply with the provisions of Section 4.01(a), Section 4.02(b) or Section 3.02 in connection with the issuance, redemption or repurchase of any shares of Class A Common Stock or other Equity Securities of Pubco or any of its Subsidiaries or any Units or other Equity Securities of the Company, then the Managing Member may in good faith implement an economically equivalent alternative arrangement without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met, and the rights of the holders of PubCo Preferred Stock as set forth in the Certificate of Designations; and

(ii) if (x) Pubco incurs any indebtedness and desires to transfer the proceeds of such indebtedness to the Company and (y) Pubco is unable to lend the proceeds of such indebtedness to the Company on an equivalent basis because of restrictions in any debt instrument of Pubco, the Company or any of their Subsidiaries, then notwithstanding Section 4.02(a) or Section 4.02(b), the Managing Member may in good faith implement an economically equivalent alternative arrangement in connection with the transfer of proceeds to the Company using non-participating preferred Equity Securities of the Company without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met, and the rights of the holders of PubCo Preferred Stock as set forth in the Certificate of Designations.

ARTICLE 5

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS

Section 5.01 Capital Contributions.

(a) From and after the date hereof, no Member shall have any obligation to the Company, to any other Member or to any creditor of the Company to make any further Capital Contribution, except as expressly provided in Section 4.01(a), Section 4.01(c) or Section 10.02.

(b) Except as expressly provided herein, no Member, in its capacity as a Member, shall have the right to receive any cash or any other property of the Company.

Section 5.02 Capital Accounts.

(a) Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Member on the books of the Company in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such provisions, the following provisions:

(i) Each Member listed on the Member Schedule will have a Capital Account balance as of the date of the Reorganization equal to such Member's Reorganization Date Capital Account Balance, as set forth on the Member Schedule. The Member Schedule shall be amended by the Managing Member after the closing of the IPO and from time to time to reflect adjustments to the Members' Capital Accounts made in accordance with Sections 5.02(a)(ii), 5.02(a)(iii), 5.02(a)(iv), 5.02(c) or otherwise.

(ii) To each Member's Capital Account there shall be credited: (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Income and any item in the nature of income or gain that is allocated pursuant to Section 5.04 and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member.

(iii) To each Member's Capital Account there shall be debited: (A) the amount of money and the Carrying Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Net Loss and any items in the nature of expenses or losses that are allocated to such Member pursuant to Section 5.04 and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company.

(iv) In determining the amount of any liability for purposes of paragraphs (ii) and (iii) above there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

(v) For purposes of applying the rules of this Section 5.02, at the time Pubco contributes any portion of the net proceeds of the IPO and the 2021 Pubco Preferred Stock Issuance to the Company, to the extent permitted by applicable Law, (A) Pubco will be treated as making a Capital Contribution to the Company in an amount equal to the applicable portion of the gross proceeds received by Pubco in the IPO and the 2021 Pubco Preferred Stock Issuance and (B) the Company shall be treated as having paid the underwriter's fees and other costs and expenses of the IPO and the 2021 Pubco Preferred Stock Issuance that are paid out of the proceeds of those issuances.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent therewith. In the event that the Managing Member shall reasonably determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are maintained (including debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), the Managing Member may make such modification so long as such modification will not have any material adverse effect on the Members' economic entitlements under this agreement (including the amounts distributed to any Member pursuant to ARTICLE 12 upon the dissolution of the Company). The Managing Member also shall (i) make any adjustments that are necessary or appropriate to maintain equality between Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(b) Succession to Capital Accounts. In the event any Person becomes a Substitute Member in accordance with the provisions of this Agreement, such Substitute Member shall succeed to the Capital Account of the former Member (the "**Transferor Member**") to the extent such Capital Account relates to the Transferred Units.

(c) Adjustments of Capital Accounts. The Company shall revalue the Capital Accounts of the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (a "**Revaluation**") at the following times:

(i) immediately prior to a Capital Contribution of more than a *de minimis* amount of money or other Property to the Company by a new or existing Member as consideration for one or more Units;

(ii) immediately prior to the distribution by the Company to a Member of more than a de minimis amount of property of the Company in respect of one or more Units;

(iii) upon the issuance by the Company of Units as consideration for the provision of services to or for the benefit of the Company or a subsidiary of the Company by an existing Member or a new Member acting in a "partner" capacity or "in anticipation of becoming a partner" (as described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii));

(iv) upon the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g);

(v) upon the acquisition of an interest in the Company upon the exercise of a Noncompensatory Option (including the conversion of Preferred Units into LLC Units pursuant to Section 3.02) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(s) (in which case the adjustments will occur as of immediately after such exercise (including such conversion); and

(vi) at such other times as the Board reasonably determines in good faith to be necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2;

provided, however, that (I) adjustments described above other than in clause (iv) above will be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interest of the Members and (II) so long as any Noncompensatory Option (including Preferred Units) is outstanding, the adjustment of Carrying Values will take into account Treasury Regulations Sections 1.704-1(b)(2)(iv)(h)(2) (*e.g.*, to take into account the conversion rights of the Preferred Unit holders).

(d) No Member shall be entitled to withdraw capital or receive distributions except as specifically provided herein. A Member shall have no obligation to the Company, to any other Member or to any creditor of the Company to restore any negative balance in the Capital Account of such Member. Except as expressly provided elsewhere herein, no interest shall be paid on the balance in any Member's Capital Account.

(e) Whenever it is necessary for purposes of this Agreement to determine a Member's Capital Account on a per Unit basis, such amount shall be determined by dividing the Capital Account of such Member attributable to the applicable class of Units held of record by such Member by the number of Units of such class held of record by such Member.

(f) Notwithstanding anything to the contrary in this Section 5.02, but subject to the application of Section 5.05(a), it is intended that each Member's Capital Account per LLC Unit be equal to each of the other Members' Capital Account per LLC Unit. If at any time there is a difference between a Member's Capital Account per Unit and the other Members' Capital Accounts per Unit, the Company shall make appropriate adjustments with respect to the Members' Capital Accounts to eliminate or minimize such difference.

Section 5.03 Amounts and Priority of Distributions.

(a) Distributions Generally. Except as otherwise provided in Section 12.02, distributions shall be made to the Members as set forth in this Section 5.03, at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(b) Distributions and Payments to the Members.

(i) Immediately prior to the time that any cash Preferred Coupon or other cash dividends are to be distributed by Pubco in respect of Pubco Preferred Stock, the Company shall make a cash payment to Pubco in respect of the Preferred Units in an amount equal to the amount of cash to be distributed by Pubco in respect of the Pubco Preferred Stock. In the event that any dividends are to be distributed in-kind by Pubco in respect of the Pubco Preferred Stock through the increase of the Fixed Liquidation Preference of the Pubco Preferred Stock, the Company shall increase the corresponding liquidation preference of the Preferred Units, as applicable.

(ii) Subject to Section 5.03(b)(i), Section 5.03(b)(iii), Section 5.03(b)(iv), Section 5.03(e), Section 5.03(g) and the rights of the holders of Preferred Units pursuant to Section 3.02, distributions shall be made to the Members holding LLC Units in proportion to their respective LLC Unit Percentage Interests, at such times and in such amounts as the Managing Member in its sole discretion may determine.

(iii) Notwithstanding the foregoing provisions of this Section 5.03(b), no distributions (other than Tax Distributions pursuant to Section 5.03(e)) will be made in respect of an Unvested LLC Unit. The portion of any distribution (other than Tax Distributions pursuant to Section 5.03(e)) that would have been made in respect of any Unvested LLC Unit (or portion thereof) under thisSection 5.03(b) if such LLC Unit were vested ("**Unvested Distribution Amount**") will be recorded as an Unvested Distribution Amount in the Company's books and records at the time of such distribution. The Unvested Distribution Amount in respect of any such LLC Unit (or portion thereof) that vested following such prior distribution will be distributed by the Company to the holder of such LLC Unit in the proportion of, and promptly following, such vesting. Upon the termination, forfeiture or cancellation of any Unvested LLC Unit, (i) the former holder of such Unvested LLC Unit shall have no right to receive the Unvested Distribution Amount, (ii) any Unvested Distribution Amount previously recorded with respect to such Unvested LLC Unit will be noted as cancelled on the books and records of the Company and (iii) the Managing Member may cause the Company to distribute such cancelled amount to the Members pursuant to the next distribution under Section 5.03(b)(i).

(c) Pubco Distributions. Notwithstanding the provisions of Section 5.03(b), the Managing Member, in its sole discretion, may authorize that cash be distributed to Pubco or any of its Subsidiaries (which payment shall be made without pro rata distributions to the other Members) either (i) in exchange for the redemption, repurchase or other acquisition of LLC Units held by any Pubco Member or any of its Subsidiaries to the extent that the proceeds of such distribution are used to redeem, repurchase or otherwise acquire an equal number of shares of Common Stock in accordance with Section 4.02(b)(i), (ii) in exchange for the redemption, repurchase or other acquisition of Preferred Units held by a Pubco Member to the extent that the proceeds of such distribution are used to redeem, repurchase or otherwise acquire an equal number of shares of Pubco Preferred Stock in accordance with Section 4.02(b)(ii) or (iii) in exchange for the redemption, repurchase or other acquisition of Equity Securities of the Company held by a Pubco Member that economically mirror any Economic Pubco Securities other than Common Stock or Pubco Preferred Stock to the extent that the proceeds of such distribution are used to redeem, repurchase or otherwise acquire an equal number of shares of such Economic Pubco Securities in accordance with Section 4.02(b)(iii).

(d) Distributions in Kind. Any distributions in kind shall be made at such times and in such amounts as the Managing Member, in its sole discretion, shall determine based on their fair market value as determined by the Managing Member in the same proportions as if distributed in accordance with Section 5.03(b), with all Members holding LLC Units participating in proportion to their respective LLC Unit Percentage Interests. If cash and property in kind are to be distributed simultaneously, then the Company shall distribute such cash and property in kind in the same proportion to each Member entitled to participate in such distribution.

(e) Tax Distributions. Notwithstanding any other provision of this Section 5.03, but subject to the rights of the holders of Preferred Units, to the extent the Company has immediately available cash for distribution and consistent with the Company's obligations to its creditors (each as reasonably determined by the Managing Member) and so long as the Company is treated as a partnership for U.S. federal income tax purposes, at least five (5) Business Days prior to the date on which estimated taxes are required to be paid with respect to a fiscal quarter (each a "**Tax Distribution Date**"), the Company shall make a cash distribution to (i) Pubco in respect of the Preferred Units in accordance with this Section 5.03(e) and (ii) the Members holding LLC Units in an amount calculated in accordance with the terms of this Section 5.03(e) to satisfy the Members' U.S. federal, state and local income tax liability attributable to allocations of income, gain, loss, deduction and credit of the Company with respect to such LLC Units (such distributions, "**Tax Distributions**").

(i) The Company shall make Tax Distributions (x) first, to Pubco in an amount equal to the Quarterly Preferred Tax Liability and (y) thereafter, to each Member holding LLC Units for each Fiscal Quarter in an amount equal to the excess of (A) the Member's estimated Quarterly Tax Liability for the current fiscal quarter and all prior fiscal quarters of the current Fiscal Year, less (B) any distributions previously made to such Member pursuant to this Section 5.03(e) or deemed made pursuant to clause (ii) of Section 5.06(c), in each case, attributable to the Fiscal Year that includes such fiscal quarter. Any distributions to a Member during a calendar year will be treated as a Tax Distribution pursuant to this Section 5.03(e) to the extent of the amount specified or calculated for such Member with respect to such year pursuant to the preceding sentence.

(ii) A final accounting for Tax Distributions ("**Final Tax Distribution Amount**") will be made for each Fiscal Year after the Company's actual taxable income for such Fiscal Year has been determined. If, with respect to a Fiscal Year, the amount of Tax Distributions received by a Member in respect of its LLC Units or its Preferred Units, as applicable, is less than the Member's Final Tax Distribution Amount as determined separately with respect to a Member's Quarterly Tax Liability and Quarterly Preferred Tax Liability (determined in a manner consistent with the determination of Quarterly Tax Liability or Quarterly Preferred Tax Liability, as applicable for a fiscal quarter), then the Company shall promptly distribute any such shortfall to such Member as soon as the Company has immediately available cash to make such distributions. Distributions with respect to such shortfalls shall be made in the same order and priority as set forth in Section 5.03(e)(i). If, with respect to a Fiscal Year, the amount of Tax Distributions received by a Member in respect of its LLC Units or its Preferred Units, as applicable, exceeds the Member's Final Tax Distribution Amount with respect thereto, then this excess amount will be (A) credited against and reduce any future distributions under this Section 5.03(e) or Section 12.02(b) to which such Member otherwise would be entitled or under Section 5.03(e)(i)(x) or Section 5.03(e)(i)(y), as applicable, and (B) if such Member ceases to be a Member, repaid, without interest, by such former Member in cash to the Company within fifteen (15) calendar days after delivery of a written notice stating the amount of such excess.

(iii) Tax Distributions in respect of a Member's Quarterly Tax Liability will be treated as an advance of, and will therefore reduce, amounts otherwise distributable to the Members pursuant to Section 5.03(b) (but not Section 5.03(c)). Tax Distributions in respect of a Member's Quarterly Preferred Tax Liability shall not be treated as an advance of or reduce distributions pursuant to Section 5.03(b) in respect of the Preferred Units.

(iv) Notwithstanding any other provision of this Section 5.03 to the contrary, Tax Distributions in respect of a Member's Quarterly Tax Liability shall be made to all Members holding LLC Units on a pro rata basis in accordance with their LLC Unit Percentage Interests, notwithstanding the differing amount of tax liabilities of such Members, such that each such Member receives at least its Tax Distribution Amount with respect to such Member's LLC Units as of the date the Tax Distribution is made. If on the date on which a Tax Distribution is to be made there are not sufficient available funds in the Company (or any of its Subsidiaries that are disregarded entities or partnerships for U.S. federal income tax purposes) to distribute the full amount of the relevant Tax Distributions otherwise to be made or any credit agreements or other debt documents to which the Company (or any of its Subsidiaries) is a party do not permit the Company to receive from its Subsidiaries or distribute to each such Member the full amount of the Tax Distributions otherwise to be made to each such Member, distributions pursuant to this Section 5.03 shall be made to all Members on a pro rata basis in accordance with their LLC Unit Percentage Interests as of such date to the extent of the available funds but, for the avoidance of doubt, shall be subject to the same order and priority as set forth in Section 5.03(e)(i).

(f) Guaranteed Payments. Except as otherwise provided in this Agreement, (i) the aggregate amount of payments received by Pubco pursuant to Section 5.03(b)(i), (ii) the aggregate net amount of Tax Distributions received by Pubco with respect to its Preferred Units under Section 5.03(e)(i)(x) (taking into account any adjustments pursuant to Section 5.03(e)(ii)) and (iii) the sum of the accrued and unpaid Preferred Coupon on all outstanding shares of Pubco Preferred Stock, without double counting, will be treated as "guaranteed payments" within the meaning of Code Section 707, and will not be treated as distributions for purposes of computing Pubco's Capital Account.

(g) Assignment. Each Member and its Permitted Transferees shall have the right to assign to any Transferee of Units, pursuant to a Transfer made in compliance with this Agreement, the right to receive any portion of the amounts distributable or otherwise payable to such Member pursuant to Section 5.03(b).

Section 5.04 Allocations.

(a) Book Allocations of Net Income and Net Loss. For each Fiscal Year (or other applicable period), except as otherwise provided in this Agreement including Section 5.05(a), and after giving effect to the special allocations set forth in Section 5.04(b), Section 5.04(c) and Section 5.04(d), Net Income or Net Loss of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the excess of:

(i) the distributions that would be made to such Member pursuant to Section 5.03 if (1) the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, (2) all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and (C) the net assets of the Company were distributed, in accordance with Section 12.02(b)(ii), to the Members immediately after making such allocation; minus

(ii) the sum of (1) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain plus (2) the amount, if any, that such Member is obligated (or deemed obligated) to contribute in the capacity as Member, each as computed immediately prior to the hypothetical sale of assets described in Section 5.04(a)(i);

provided that, solely for purposes of this Section 5.04(a), other than following the occurrence of a Dissolution Event, the amount to which Pubco would be entitled to receive as a distribution under Section 5.04(a)(i)(C) with respect to each Preferred Unit (other than any Preferred Unit that has been converted into LLC Units or redeemed), shall be treated as equal to the Fixed Liquidation Preference (as defined in the Certificate of Designation) in respect of a share of Pubco Preferred Stock.

(b) Special Allocations. The following special allocations shall be made in the following order:

(i) *Minimum Gain Chargeback*. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this ARTICLE 5, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.04(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Member Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this ARTICLE 5, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.04(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset.* In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as promptly as possible; provided that an allocation pursuant to this Section 5.04(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this ARTICLE 5 have been tentatively made as if this Section 5.04(b)(iii) were not in the Agreement.

(iv) *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in a manner determined by the Managing Member consistent with Treasury Regulations Sections 1.704-2(b) and 1.704-2(c).

(v) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(j)(1).

(vi) *Section 754 Adjustments*. (A) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company or as a result of a Transfer of a Member's interest in the Company, as the case may be, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of such asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income and Net Loss. (B) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to such Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) Curative Allocations. The allocations set forth in Section 5.04(b)(i) through Section 5.04(b)(vi) and Section 5.04(d) (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of items of Company income, gain, loss, or deduction pursuant to this

Section 5.04(c). Therefore, notwithstanding any other provision of this ARTICLE 5 (other than the Regulatory Allocations), the Managing Member shall make such offsetting allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 5.04(a).

(d) Loss Limitation. Net Loss and individual items of loss or deduction allocated pursuant to Section 5.04 may not be allocated to a Member holding LLC Units to the extent the allocation would result in the Member having an Adjusted Capital Account Deficit at the end of any Fiscal Year. Any Net Loss and individual items of loss or deduction in excess of this limitation will be allocated among the other Members holding LLC Units who would not have an Adjusted Capital Account Deficit, pro rata, in proportion to such Members' Adjusted Capital Account balances until all such Members' have a zero balance in their Adjusted Capital Account. Thereafter, any remaining Net Loss and individual items of loss or deductions will be allocated to the Members holding LLC Units, pro rata, in proportion to their LLC Unit Percentage Interests.

Section 5.05 Other Allocation Rules.

(a) Noncompensatory Option. Upon the conversion of the Preferred Units into LLC Units or the redemption of the Preferred Units, as applicable, the Company shall comply with the allocation provisions set forth in Treasury Regulations Sections 1.704-1(b)(2)(iv)(s) and 1.704-1(b)(4)(x) (including making any required "corrective" allocations in accordance with the Treasury Regulations), in each case in the manner determined by the Managing Member in its sole discretion. Prior to the conversion of Preferred Units into LLC Units or the redemption of Preferred Units, as a applicable, the Company shall also comply with the provisions set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(h)(2) in the manner determined by the Managing Member in its sole discretion.

(b) Interim Allocations Due to Percentage Adjustment. If Units or another Equity Security in the Company are the subject of a Transfer or the Members' interests in the Company change pursuant to the terms of the Agreement during any Fiscal Year, the amount of Net Income and Net Loss (or items thereof) to be allocated to the Members for such entire Fiscal Year shall be allocated to the portion of such Fiscal Year that precedes the date of such Transfer or change (and if there shall have been a prior Transfer or change in such Fiscal Year, then that portion of such year shall commence on the date of such prior Transfer or change) and to the portion of such Fiscal Year that occurs on and after the date of such Transfer or change (and if there shall be a subsequent Transfer or change in such Fiscal Year, then that portion of the year shall end immediately prior to the date of such subsequent Transfer or change), in accordance with an interim closing of the books. The amounts of the items so allocated to each such portion shall be credited or charged to the Members in accordance with Section 5.04 as in effect during each such portion of the Fiscal Year in question. Such allocation shall be in accordance with Section 706 of the Code and the regulations thereunder and made without regard to the date, amount or receipt of any distributions that may have been made with respect to the transferred Units or Equity Security to the extent consistent with Section 706 of the Code and the regulations thereunder. As of the date of such Transfer, the Transferee Member shall succeed to the Capital Account of the Transferor Member with respect to the transferred Units or other Equity Security.

(c) Tax Allocations. Allocations pursuant to this Section 5.05(c) are solely for purposes of United States federal, state and local tax purposes and will neither affect nor be taken in account in computing any Member's Capital Account or share of Net Income, Net Loss, distributions (other than Tax Distributions) or other items pursuant to any provision of this Agreement.

(i) *Generally*. Except as otherwise provided in this Section 5.05(c), each item of Company income, gain, loss or deduction for federal income tax purposes will be allocated among the Members in the same manner as such items are allocated for book purposes pursuant to this ARTICLE 5. Notwithstanding the foregoing, the Managing Member will have the power to make such allocations for United States federal, state and local income tax purposes as may be necessary to maintain "substantial economic effect" or to insure that such allocations are in accordance with each "partner's interest in the partnership," in each case within the meaning of Code Section 704(b) and the Treasury Regulations thereunder.

(ii) *Code Section 704(c)*.

(A) *Contributed Property.* In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Carrying Value or its Carrying Value determined pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (computed in accordance with the definition of Carrying Value) using the traditional method without curative allocations under Treasury Regulations Section 1.704-3(b).

(B) *Revaluations*. In the event that the Carrying Value of any Property of the Company is adjusted pursuant toparagraph (ii) of the definition of Carrying Value, any income, gain, loss and deduction with respect to that property shall be allocated among the Members so as to account for any variation between the adjusted basis of such property for federal income tax purposes and its Carrying Value in accordance with Code Section 704(c) and the Regulations thereunder using the traditional method without curative allocations under Treasury Regulations Section 1.704-3(b) or such other allocation method reasonably determined by the Managing Member.

Section 5.06 Tax Withholding; Withholding Advances.

(a) Tax Withholding.

(i) If requested by the Managing Member, each Member shall, if able to do so, deliver to the Company: (A) an affidavit in form satisfactory to the Company that the applicable Member (or its partners, as the case may be) is not subject to withholding tax under the provisions of any federal, state, local, foreign or other law; (B) any certificate or form (*e.g.*, an IRS W-9) that the Company may reasonably request with respect to any such laws; and/or (C) any other form or instrument reasonably requested by the Company relating to any Member's status under such law. In the event that a Member fails or is unable to deliver to the Company a certificate or form described in clause (B) of this clause (i), the Company may withhold amounts from such Member in accordance with Section 5.06(b).

(ii) After receipt of a written request of any Member, the Company shall provide such information to such Member and take such other action as may be reasonably necessary to assist such Member in making any necessary filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding imposed by any foreign taxing authority with respect to amounts distributable or items of income allocable to such Member hereunder to the extent not adverse to the Company or any Member. In addition, the Company shall, at the request of any Member, make or cause to be made (or cause the Company to make) any such filings, applications or elections; provided that any such requesting Member shall cooperate with the Company, with respect to any such filing, application or election to the extent reasonably determined by the Company and that any filing fees, taxes or other out-of-pocket expenses reasonably incurred and related thereto shall be paid and borne by such requesting Member or, if there is more than one requesting Member, by such requesting Members in accordance with their Percentage Interests.

(b) Authorization to Withhold. To the extent the Company is required by Applicable Law to withhold or to make tax payments on behalf of or with respect to any Member (including backup withholding and any tax payment made by the Company pursuant to Section 6225 of the Code that is attributable to such Member), the Company may withhold such amounts from distributions, including Tax Distributions, and pay over such withheld amounts to an applicable taxing authority as so required. The amount so withheld and paid over to a taxing authority will be treated under this Agreement as if such amount had been distributed to such Member under Section 5.03(b), and will reduce the amount distributable to such Member under Section 5.03(b).

(c) Withholding Advances. If the amount withheld and paid over to a taxing authority underSection 5.06(b) exceeds the amount otherwise distributable to the applicable Member under Section 5.03(b) (such excess amount, a "**Withholding Advance**"), then this Withholding Advance will be treated as a loan bearing interest at a rate equal to the short-term applicable federal rate within the meaning of Code Section 1274(d), compounded annually, as of the date of payment of the withheld amounts to the taxing authority. All Withholding Advances made on behalf of a Member, plus interest thereon, shall (i) be paid on demand by the Member on whose behalf such Withholding Advances were made or (ii) with the consent of the Managing Member and the affected Member be repaid by reducing the amount of the current or next succeeding distribution or distributions under Section 5.03(b) that would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member.

(d) Withholding Advances — Reimbursement of Liabilities. Each Member hereby agrees to reimburse the Company for any liability with respect to Withholding Advances (including interest thereon) required or made on behalf of or with respect to such Member (including penalties imposed with respect thereto). The obligation of a Member to reimburse the Company for taxes pursuant to this Section 5.06 shall continue after such Member Transfers its Units with respect to all payments or allocations to such Member were made prior to the date of such Transfer.

ARTICLE 6

CERTAIN TAX MATTERS

Section 6.01 Partnership Representative. Pubco is hereby appointed the "tax matters partner" or the "partnership representative," as the case may be (in each case, the "**Partnership Representative**"), of the Company under Section 6231 of the Code prior to the enactment of U.S. Public Law 114-74 or Section 6223 of the Code, as applicable, for each taxable year of the Company. The Partnership Representative shall comply with the rules set forth in Code Sections 6221 through 6241 and the Treasury Regulations promulgated or proposed thereunder (the "**Revised Partnership Audit Procedures**"). If the Partnership Representative is no longer capable of serving in such capacity or resigns, the Managing Member is authorized to appoint a successor, provided that such successor agree to all of the terms of this Section 6.01 All such appointments, resignations, and appointments of successors will comply with the Revised Partnership Audit Procedures.

(a) So long as Pubco or another non-individual is the Partnership Representative, the Partnership Representative shall appoint a designated individual, within the meaning of and satisfying the qualification requirements of Treasury Regulations Section 301.6223-1(b)(3)(ii) (the "**Designated Individual**"), who shall be the agent of and have the same authorities, rights, and responsibilities as the Partnership Representative, including as provided in this Section 6.01. All references to the Partnership Representative set forth in this Section 6.01 will also apply to the Designated Individual and will include any actions by the Designated Individual on behalf of the Partnership Representative and the Company in that person's capacity as Designated Individual.

(b) The Partnership Representative is authorized to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by taxing authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith; provided that the Partnership Representative shall notify the Members of all material matters that come to its attention in its capacity as Partnership Representative.

(c) The Company shall not be obligated to pay any fees or other compensation to the Partnership Representative in its capacity as such, but the Company shall reimburse the Partnership Representative for all reasonable out-of-pocket costs and expenses (including attorneys' and other professional fees) incurred by it in its capacity as Partnership Representative. The Company shall defend, indemnify, and hold harmless the Partnership Representative against any and all liabilities sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Partnership Representative, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

(d) If the Company receives a notice of proposed partnership adjustment ("**NOPPA**") under Code Section 6231(a)(2), then the Partnership Representative shall notify the Members of such NOPPA and of the Members' opportunity to provide information relevant to a request by the Partnership Representative to the IRS to modify the proposed imputed underpayment pursuant to Code Section 6225(c). If the Partnership Representative receives a written response from one or more Members, then the Partnership Representative may make a timely request to the IRS for a modification of the proposed imputed underpayment pursuant to Code Section 6225(c) and Treasury Regulations Section 301.6225-2 (or any successor regulations or other provisions) if such modification would reduce the amount of the proposed adjustment set forth in the NOPPA. The Members (and, if applicable, their pass-through beneficial owners) shall take such reasonable actions requested by the Partnership Representative with respect to the request for modification.

(e) The Members acknowledge that the Company intends to make the election described in Section 6226 of the Code, unless the Partnership Representative determines not to make such election in its sole reasonable discretion. In the event an imputed underpayment or other partnership adjustment is included in a final partnership adjustment under Code Section 6231(a)(3) and the Company does not make an election under Code Section 6226, then the Partnership Representative shall use reasonable good faith efforts to apportion such underpayment or other adjustment among the Members for the taxable year in which the adjustment is finalized in such manner as may be necessary (as determined by the Partnership Representative in good faith after consulting with the Company's accountants or other tax advisors) so that, to the maximum extent possible, the tax and economic consequences of the adjustment and any associated interest and penalties are borne by the Members and former Members based upon their respective interests in the Company for the reviewed year, taking into account any differences in the amount of taxes attributable to each Member because of such Member's status, nationality or other characteristics.

(f) In the case of a state, local, or non-U.S. audit or other tax proceeding under rules similar to the Revised Partnership Audit Procedures, references to sections of the Code and the Treasury Regulations and this Section 6.01 will be deemed to include corresponding and analogous provisions of applicable state, local or non-U.S. law, as applicable.

(g) The provisions of this Section 6.01, including the obligations of a Member under this Section 6.01, will survive a Member's sale or other disposition of its interests in the Company and the termination, dissolution, liquidation, or winding up of the Company.

Section 6.02 Section 754 Elections. If not yet made, the Company shall make, and shall cause any Subsidiary of the Company that is treated as a partnership for U.S. federal income tax purposes to make, a timely election under Section 754 of the Code (and a corresponding election under state and local law) effective with respect to the taxable year during which the IPO occurs, and the Managing Member shall not take any action to revoke such elections.

Section 6.03 Debt Allocation; Excess Nonrecourse Liabilities. Indebtedness of the Company treated as "excess nonrecourse liabilities" (as defined in Treasury Regulation Section 1.752-3(a)(3)) shall be allocated among the Members holding Units based on their Percentage Interests or on such other reasonable basis as the Managing Member may determine in its sole discretion.

ARTICLE 7

MANAGEMENT OF THE COMPANY

Section 7.01 Management by the Managing Member. Except as otherwise specifically set forth in this Agreement, the Managing Member shall be deemed to be a "manager" for purposes of applying the Delaware Act. Except as expressly provided in this Agreement or the Delaware Act, the day-to-day business and affairs of the Company and its Subsidiaries shall be managed, operated and controlled by the Managing Member in accordance with the terms of this Agreement and no other Members shall have management authority or rights over the Company or its Subsidiaries. The Managing Member is, to the extent of its rights and powers set forth in this Agreement, an agent of the Company for the purpose of the Company's and its Subsidiaries' business, and the actions of the Managing Member taken in accordance with such rights and powers, shall bind the Company (and no other Members shall have such right). Except as expressly provided in this Agreement, the Managing Member shall have all necessary powers to carry out the purposes, business, and objectives of the Company and its Subsidiaries. The Managing Member shall have the power and authority to delegate to one or more other Persons the Managing Member's rights and powers to manage and control the business and affairs of the Company, including to delegate to agents and employees of a Member or the Company (including any officers or Subsidiary thereof), and to delegate by a management agreement or another agreement with, or otherwise to, other Persons. The Managing Member may authorize any Person (including any Member or officer of the Company) to enter into and perform any document on behalf of the Company or any Subsidiary.

Section 7.02 Withdrawal of the Managing Member. Pubco may withdraw as the Managing Member and appoint as its successor, at any time upon written notice to the Company, (i) any wholly-owned Subsidiary of Pubco, (ii) any Person of which Pubco is a wholly-owned Subsidiary, (iii) any Person into which Pubco is merged or consolidated or (iv) any transferee of all or substantially all of the assets of Pubco, which withdrawal and replacement shall be effective upon the delivery of such notice. No appointment of a Person other than Pubco (or its successor, as applicable) as Managing Member shall be effective unless Pubco (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against the new Managing Member, to cause the new Managing Member to comply with all the Managing Member's obligations under this Agreement and the Reorganization Documents.

Section 7.03 Decisions by the Members.

(a) Other than the Managing Member, the Members shall take no part in the management of the Company's business and shall transact no business for the Company and shall have no power to act for or to bind the Company. The Managing Member shall not (i) engage in any non-Business activity or (ii) own any material assets other than Units and/or any cash or other property or assets distributed by, or otherwise received from, the Company, without the prior written consent of the Members, unless the Managing Member determines in good faith that such

actions or ownership are in the best interest of the Company; provided, however, that the Company may engage any Member or principal, partner, member, shareholder or interest holder thereof as an employee, independent contractor or consultant to the Company, in which event the duties and liabilities of such individual or firm with respect to the Company as an employee, independent contractor or consultant shall be governed by the terms of such engagement with the Company.

(b) Except as expressly provided herein, the Members shall not have the power or authority to vote, approve or consent to any matter or action taken by the Company. Except as otherwise provided herein, any proposed matter or action subject to the vote, approval or consent of the Members shall require the approval of (i) a majority in interest of the Members or such class of Members, as the case may be (by (x) resolution at a duly convened meeting of the Members, or (y) written consent of the Members). Except as expressly provided herein, all Members shall vote together as a single class on any matter subject to the vote, approval or consent of the Members. In the case of any such approval, a majority in interest of the Members may call a meeting of the Members at such time and place or by means of telephone or other communications facility that permits all persons participating in such meeting to hear and speak to each other for the purpose of a vote thereon. Notice of any such meeting shall be required, which notice shall include a brief description of the action or actions to be considered by the Members. Unless waived by any such Member in writing, notice of any such meeting shall be given to each Member at least four (4) days prior thereto. Attendance or participation of a Member at a meeting shall constitute a waiver of notice of such meeting, except when such Member attends or participates in the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not properly called or convened. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the actions so taken, shall be signed by Members sufficient to approve such action pursuant to this Section 7.03(b). A copy of any such consent in writing will be provided to the Members promptly thereafter.

Section 7.04 Duties.

(a) The parties acknowledge that the Managing Member will take action through its board of directors and officers, and that the members of the Managing Member's board of directors and its officers will owe fiduciary duties to the stockholders of the Managing Member. The Managing Member will use all commercially reasonable and appropriate efforts and means, as determined in good faith by the Managing Member, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of the Managing Member, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Managing Member, the Members and/or the stockholders of the Managing Member in a manner that does not (i) disadvantage the Members or their interests relative to the stockholders of the Managing Member, (ii) advantage the stockholders of the Managing Member relative to the Members or (iii) treats the Members and the stockholders of the Managing Member differently; provided that in the event of a conflict between the interests of the stockholders of the Managing Member and the interests of the Members other than the Managing Member, such other Members agree that the Managing Member shall discharge its fiduciary duties to such other Members by acting in the best interests of the Managing Member's stockholders.

Section 7.05 Officers.

(a) Appointment of Officers. The Managing Member may appoint individuals as officers ("**Officers**") of the Company, which may include such officers as the Managing Member determines are necessary and appropriate. No Officer need be a Member. An individual may be appointed to more than one office. If an Officer is also an officer of the Managing Member, then Section 7.04 shall apply to such Officer in the same manner as it applies to the Managing Member.

(b) Authority of Officers. The Officers shall have the duties, rights, powers and authority as may be prescribed by the Managing Member from time to time.

(c) Removal, Resignation and Filling of Vacancy of Officers. The Managing Member may remove any Officer, for any reason or for no reason, at any time. Any Officer may resign at any time by giving written notice to the Company, and such resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; provided that, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any such resignation shall be without prejudice to the rights, if any, of the Company or such Officer under this Agreement. A vacancy in any office because of death, resignation, removal or otherwise shall be filled by the Managing Member.

ARTICLE 8

TRANSFERS OF INTERESTS

Section 8.01 Restrictions on Transfers.

(a) Except as expressly permitted by Section 8.02, and subject to Section 8.01(b), Section 8.01(c), Section 8.01(d) and Section 8.01(e), any underwriter lock-up agreement applicable to such Member and/or any other agreement between such Member and the Company, Pubco or any of their controlled Affiliates, without the prior written approval of the Managing Member, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto, including the right to vote or consent on any matter or to receive or have any economic interest in distributions or advances from the Company pursuant thereto, to any Person that is not a Permitted Transferee. Any such Transfer that is not in compliance with the provisions of this Agreement shall be deemed a Transfer by such Member of Units in violation of this Agreement (and a breach of this Agreement by such Member) and shall be null and *void ab initio*. Notwithstanding anything to the contrary in this ARTICLE 8, (i) Section 10.03 shall govern the exchange of LLC Units for shares of Class A Common Stock, and an exchange pursuant to, and in accordance with, Section 10.03 shall not be considered a "Transfer" for purposes of this Agreement, and (ii) any other Transfer of shares of Common Stock shall not be considered a "Transfer" for purposes of this Agreement.

(b) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer otherwise permitted or approved pursuant to this ARTICLE 8 that:

(i) the Transferor shall have provided to the Company prior notice of such Transfer; and

(ii) the Transfer shall comply with all Applicable Laws and the Managing Member shall be reasonably satisfied that such Transfer will not result in a violation of the Securities Act.

(c) Notwithstanding any other provision of this Agreement to the contrary, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto if such Transfer (i) would cause the Company to have more than 95 partners, within the meaning of Treasury Regulations Section 1.7704-1(h), or (ii) in the sole discretion of the Managing Member, could otherwise cause the Company to be classified as a "publicly traded partnership" as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder.

(d) Any Transfer of Units pursuant to this Agreement, including this ARTICLE 8, shall be subject to the provisions of Section 3.01 and Section 3.03.

(e) If there is a Transfer of Units to a Permitted Transferee pursuant to this Agreement, the Units held by each such Permitted Transferee shall be included in calculating the Substantial Ownership Requirement.

Section 8.02 Certain Permitted Transfers. Notwithstanding anything to the contrary herein but subject to Section 8.01(b) and Section 8.01(c), the following Transfers shall be permitted:

(a) Any Transfer by any Member of its Units pursuant to a Disposition Event (as such term is defined in the certificate of incorporation of Pubco);

(b) Any grant of a bona fide security interest in, or a bona fide pledge of, Units to J.P. Morgan Chase & Co. or an affiliated entity or to any other financial institution that is approved by the Managing Member as collateral to secure indebtedness and any Transfer pursuant to the enforcement of such collateral;

(c) At any time, any Transfer by any Member of Units to any Transferee approved in writing by the Managing Member (not to be unreasonably withheld), it being understood that it shall be reasonable for the Managing Member to withhold such consent if the Managing Member reasonably determines that such Transfer would materially increase the risk that the Company would be classified as a "publicly traded partnership" as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder; and

(d) The Transfer of all or any portion of a Member's Units to a Permitted Transferee of such Member.

Section 8.03 Distributions. Notwithstanding anything in this ARTICLE 8 or elsewhere in this Agreement to the contrary, if a Member Transfers all or any portion of its Units after the designation of a record date and declaration of a distribution pursuant to ARTICLE 5 and before the payment date of such distribution, the transferring Member (and not the Person acquiring all or any portion of the transferring Member's Units) shall be entitled to receive such distribution in respect of such transferred Units.

Section 8.04 Registration of Transfers. When any Units are Transferred in accordance with the terms of this Agreement, the Company shall cause such Transfer to be registered on the books of the Company.

ARTICLE 9

CERTAIN OTHER AGREEMENTS

Section 9.01 Non-Compete; Non-Disparagement. Each Restricted Person agrees for the benefit of the Company and Pubco that:

(a) Unless otherwise specified in a separate agreement with the Company, the Restricted Person shall not, from and after the date the Restricted Person first acquires, directly or indirectly, any Units until the date that is five (5) years after the date on which the Restricted Person no longer holds any Units, either directly or indirectly, do any of the following: (i) directly or indirectly engage in any Competitive Activity, or (ii) solicit, or assist in the solicitation of, any Person who either is or has been an employee, producer or independent contractor of the Company or any of its Subsidiaries within the prior six (6) months for the purpose of inducing such Person to terminate his or her employment or relationship with the Company or its Subsidiary in order to work for Restricted Person or any other Person, whether or not a Competitive Enterprise.

(b) The Restricted Person shall not take, and the Restricted Person shall take reasonable steps to cause its Affiliates not to take, any action or make any public statement, whether or not in writing, that disparages or denigrates the Company or any of its Subsidiaries (the "**Company Parties**") or their respective directors, officers, employees, members, representatives and agents.

(c) Each Restricted Person agrees that (i) the agreements and covenants contained in thisSection 9.01 are reasonable in scope and duration, an integral part of the transactions contemplated by this Agreement and the Reorganization Documents, and necessary to protect and preserve the Members' and Company Parties' legitimate business interests and to prevent any unfair advantage conferred on such Restricted Person taking into account and in specific consideration of the undertakings and obligations of the parties under the Agreement and the Reorganization Documents, (ii) but for each Restricted Person's agreement to be bound by the agreements and covenants contained under this Section 9.01, the Members and the Company Parties would not have entered into or consummated those transactions contemplated in the Agreement and the Reorganization Documents and (iii) that irreparable harm would result to the Members and the Company Parties as a result of a violation or breach (or potential violation or breach) by such Restricted Person (or its Affiliates) of this Section 9.01. In addition, each Member agrees that Pubco and the Company shall have the right to specifically enforce the provisions of this Section 9.01 in any state or federal court located in any jurisdiction deemed necessary by Pubco or the Company to enforce such covenants, in addition to any other remedy to which such parties are entitled at law or in equity. If a final judgment of a court of competent jurisdiction or other Governmental Authority determines that any term, provision, covenant or restriction

contained in this Section 9.01 is invalid or unenforceable, then the parties hereto agree that the court of competent jurisdiction or other Governmental Authority will have the power to modify this Section 9.01 (including by reducing the scope, duration or geographic area of the term or provision, deleting specific words or phrases or replacing any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision) so as to effect the original intention of the invalid or unenforceable term or provision. To the fullest extent permitted by law, in the event that any proceeding is brought under or in connection with this Section 9.01, the prevailing party in such proceeding (whether at final or on appeal) shall be entitled to recover from the other party all costs, expenses, and reasonable attorneys' fees incident to any such proceeding. The term "prevailing party" as used herein means the party in whose favor the final judgment or award is entered in any such proceeding.

(d) Notwithstanding anything to the contrary, this Section 9.01 is in addition to, and does not supplant, supersede, modify or limit in any manner, any other non-competition, non-solicitation, non-piracy or other similar obligations imposed on a Restricted Person, whether imposed by law (including the Restricted Person's fiduciary duties to the Company) or by contract (including contracts entered into prior to or concurrently with the Restricted Person's execution of this Agreement).

Section 9.02 Company Call Right. In connection with any Involuntary Transfer by any Non-Pubco Member, the Company or the Managing Member may, in the Managing Member's sole discretion, elect to purchase from such Non-Pubco Member and/or the Transferee(s) in such Involuntary Transfer (each, a "**Call Member**") any or all of the Units so Transferred (or to be Transferred) ("**Call Units**"), at any time by delivery of a written notice (a "**Call Notice**") to such Call Member. The Call Notice shall set forth the LLC Unit Redemption Price and the proposed closing date of such purchase of such Call Units; provided that such closing date shall occur within ninety (90) days following the date such Call Notice is delivered to the Call Member. At the closing of any such sale, in exchange for the payment by the Company or the applicable Managing Member to such Call Member of the LLC Unit Redemption Price in cash, (a) the Call Member shall deliver its Call Units, duly endorsed or accompanied by written instruments of transfer in form satisfactory to the Company or the Managing Member, as applicable, duly executed by such Call Member and accompanied by all requisite transfer taxes, if any, (b) such Call Units shall be free and clear of any Liens and (c) each Call Member shall so represent and warrant and further represent and warrant that it is the sole beneficial and record owner of such Call Units. Following such closing, such Call Member (i) shall no longer be entitled to any rights in respect of the Transferred Call Units, including any distributions or payments by the Company or Pubco with respect to such Call Units (other than the payment of the LLC Unit Redemption Price at such closing), (ii) if such Call Member does not hold any Units thereafter, shall thereupon cease to be a Member of the Company, and (iii) to the extent such Call Member does not hold any shares of Pubco Common Stock thereafter, shall thereupon cease to be a stockholder of Pubco.

Section 9.03 Preemptive Rights. No Person shall have any preemptive, preferential or other similar right with respect to (a) additional Capital Contributions; (b) issuances or sales by the Company of any class or series of Units or other Equity Securities of the Company, whether unissued or hereafter created; (d) issuances of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any Units; (e) issuances of any right of subscription to or right to receive, or any warrant or option for the purchase of, any Units; or (f) issuances or sales of any other securities that may be issued or sold by the Company.

ARTICLE 10

REDEMPTION AND EXCHANGE RIGHTS

Section 10.01 Redemption Right of a Member

(a) Notwithstanding any provision to the contrary in this Agreement, but subject to Section 3.02 and to any other agreement between such Member and the Company, Pubco or any of their controlled Affiliates, and without the need for the approval by the Managing Member or consent by any other Members, each Member (other than the Pubco Members) holding LLC Units shall be entitled to cause the Company to redeem (a "**Redemption**") all or any portion of such Member's LLC Units, other than Unvested LLC Units (the "**Redemption Right**") at any time following the expiration of any contractual lock-up period relating to the shares of Pubco that may be applicable to such Member. A Member desiring to exercise its Redemption Right (the "**Redeeming Member**") shall exercise such right by giving written notice (the "**Redemption Notice**") to the Company with a copy to Pubco. The Redemption Notice shall specify the number of LLC Units (the "**Redeemed Units**") that the Redeeming Member intends to have the Company redeem and a date, not less than ten (10) Business Days nor more than thirteen (13) Business Days after delivery of such Redemption Notice (unless and to the extent that the Managing Member in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the "**Redemption Date**"); provided that the Company, Pubco and the Redeeming Member may change the number of Redeemed Units and/or the Redemption Date specified in such Redemption Notice to another number and/or date by mutual agreement signed in writing by each of them; provided further that a Redemption Notice may be conditioned by the Redeeming Member on the closing of an underwritten distribution of the shares of Class A Common Stock that may be issued in connection with such proposed Redemption. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 10.01(b) or has revoked or delayed a Redemption as provided in Section 10.01(c) on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) the Redeeming Member shall transfer and surrender the Redeemed Units to the Company, free and clear of all Liens, and (ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 10.01(b), and (z), if the LLC Units are certificated, issue to the Redeeming Member a certificate for a number of LLC Units equal to the difference (if any) between the number of LLC Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 10.01(a) and the Redeemed Units (*i.e.*, the number of LLC Units the Redeeming Member will hold, if any, after the Redemption Date).

(b) In exercising the Redemption Right, a Redeeming Member shall be entitled to receive the number of shares of Class A Common Stock equal to the number of Redeemed Units (the "**Share Settlement**") or cash in U.S. dollars in an amount equal to the Redeemed LLC Units Equivalent (the "**Cash Settlement**"); provided that Pubco shall have the option as provided in Section 10.02 and subject to Section 10.01(d) to select whether the redemption payment is made

by means of a Share Settlement or a Cash Settlement. Within three (3) Business Days of delivery of the Redemption Notice, Pubco shall give written notice (the "**Contribution Notice**") to the Company (with a copy to the Redeeming Member) of its intended settlement method; provided that if Pubco does not timely deliver a Contribution Notice, Pubco shall be deemed to have elected the Share Settlement method. If Pubco elects the Cash Settlement method, the Redeeming Member may retract its Redemption Notice by giving written notice (the "**Retraction Notice**") to the Company (with a copy to Pubco) within ten (10) Business Days of delivery of the Contribution Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member's, Company's and Pubco's rights and obligations under this Section 10.01 arising from the Redemption Notice.

(c) In the event that Pubco elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists: (i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective; (ii) Pubco shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption; (iii) Pubco shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption; (iv) Pubco shall have disclosed to such Redeeming Member any material non-public information concerning Pubco, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and Pubco does not permit disclosure); (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC; (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Redemption; (viii) if the Redeeming Member is a party to the Registration Rights Agreement, Pubco shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such redemption pursuant to an effective registration statement; (ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, any "black-out" or similar period under Pubco's policies covering trading in the Pubco's securities to which the applicable Redeeming Member is subject, which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement; provided further, that in no event shall the Redeeming Member seeking to revoke its Redemption Notice or delay the consummation of such Redemption and relying on any of the matters contemplated in clauses (i) through (ix) above have controlled or intentionally materially influenced any facts, circumstances, or Persons in connection therewith (except in the good faith performance of his or her duties as an officer or director of Pubco) in order to provide such Redeeming Member with a basis for such delay or revocation. If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 10.01(c), the Redemption Date shall occur on the fifth Business Day following the date on which the conditions giving rise to such delay cease to exist (or such earlier day as Pubco, the Company and such Redeeming Member may agree in writing).

(d) The number of shares of Class A Common Stock or the Redeemed LLC Units Equivalent that a Redeeming Member is entitled to receive under Section 10.01(b) (whether through a Share Settlement or Cash Settlement) shall not be adjusted on account of any distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; provided, however, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any distribution with respect to the Redeemed Units but prior to payment of such distribution, the Redeeming Member shall be entitled to receive such distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member transferred and surrendered the Redeemed Units to the Company prior to such date.

(e) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, the Redeeming Member in exercising the Redemption Right shall be entitled to receive the amount of such security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

(f) Notwithstanding anything to the contrary contained herein, neither the Company nor Pubco shall be obligated to effectuate a Redemption if such Redemption could (as determined in the sole discretion of the Managing Member) cause the Company to be treated as a "publicly traded partnership" or to be taxed as a corporation pursuant to Section 7704 of the Code or successor provisions of the Code.

Section 10.02 Election and Contribution of Pubco. In connection with the exercise of a Redeeming Member's Redemption Rights under Section 10.01(a), Pubco shall contribute to the Company the consideration the Redeeming Member is entitled to receive underSection 10.01(b). Pubco, at its option, shall determine whether to contribute, pursuant to Section 10.01(b), the Share Settlement or the Cash Settlement. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 10.01(b), or has revoked or delayed a Redemption as provided in Section 10.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) Pubco shall make its Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement) required under this Section 10.02, and (ii) the Company shall issue to Pubco a number of LLC Units equal to the number of Redeemed Units surrendered by the Redeeming Member. Notwithstanding any other provisions of this Agreement to the contrary, in the event that Pubco elects a Cash Settlement and effects a substantially concurrent issuance of Class A Common Stock to fund the Cash Settlement, Pubco shall only be obligated to contribute to the Company an amount in respect of such Cash Settlement equal to the net proceeds (after deduction of any underwriters' discounts or commissions and brokers' fees or commissions) from the sale by Pubco of a number of shares of Class A Common Stock equal to the number of Redeemed Units to be redeemed with respect to such Cash Settlement, provided that Pubco's Capital Account shall be increased by an amount equal to any discount relating to such sale of shares of Class A Common Stock. The timely delivery of a Retraction Notice shall terminate all of the Company's and Pubco's rights and obligations under this Section 10.02 arising from the Redemption Notice.

Section 10.03 Exchange Right of Pubco

(a) Notwithstanding anything to the contrary in thisARTICLE 10, Pubco may, in its sole and absolute discretion, elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement or Cash Settlement, as the case may be, through a direct exchange of such Redeemed Units and such consideration between the Redeeming Member and Pubco (a "**Direct Exchange**"). Upon such Direct Exchange pursuant to this Section 10.03, Pubco shall acquire the Redeemed Units and shall be treated for all purposes of this Agreement as the owner of such LLC Units.

(b) Pubco may, at any time prior to a Redemption Date, deliver written notice (an '**Exchange Election Notice**") to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; provided that such election does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by Pubco at any time; provided that any such revocation does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all the Redeemed Units that would have otherwise been subject to a Redemption. Except as otherwise provided by this Section 10.03, a Direct Exchange shall be consummated pursuant to the same timeframe and in the same manner as the relevant Redemption would have been consummated if Pubco had not delivered an Exchange Election Notice.

Section 10.04 Tender Offers and Other Events with Respect to Pubco

(a) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to Class A Common Stock (a "**Pubco Offer**") is proposed by Pubco or is proposed to Pubco or its stockholders and approved by the board of directors of Pubco or is otherwise effected or to be effected with the consent or approval of the board of directors of Pubco, the holders of Units (other than the Pubco Members and holders of Unvested LLC Units (solely in respect of such Unvested LLC Units)) shall be permitted to participate in such Pubco Offer by delivery of a notice of exchange (which notice of exchange shall be effective immediately prior to the consummation of such Pubco Offer (and, for the avoidance of doubt, shall be contingent upon such Pubco Offer and not be effective if such Pubco Offer is not consummated)). In the case of a Pubco Offer proposed by Pubco, Pubco will use its reasonable efforts expeditiously and in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit the holders of LLC Units (other than the Pubco Members and holders of Unvested LLC Units (solely in respect of such Unvested LLC Units)) to participate in such Pubco Offer to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock without discrimination; provided that, without limiting the generality of this sentence, Pubco will use its reasonable efforts expeditiously and in good faith to ensure that such holders may participate in each such Pubco Offer without being required to exchange LLC Units to the extent such participation is practicable. For the avoidance of doubt (but subject to Section 10.04(a)), in no event shall the holders of LLC Units participating in the Pubco Offer be entitled to receive in such Pubco Offer aggregate consideration for each LLC Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer.

(b) Notwithstanding any other provision of this Agreement, if a Disposition Event (as such term is defined in the Pubco certificate of incorporation) is approved by the board of directors of Pubco and consummated in accordance with Applicable Law, then, at the request of the Company (or following such Disposition Event, its successor) or Pubco (or following such Disposition Event, its successor), each holder of LLC Units shall be required to exchange with Pubco, at any time and from time to time after, or simultaneously with, the consummation of such Disposition Event, all of such holder's LLC Units for aggregate consideration for each LLC Unit that is equivalent to the consideration payable in respect of each share of Class A Common Stock in connection with the Disposition Event, provided, however, that in the event of a Disposition Event intended to qualify as a reorganization within the meaning of Section 368(a) of the Code or as a transfer described in Section 351(a) or Section 721 of the Code, a holder shall not be required to exchange LLC Units pursuant to this Section 10.04(b) unless, as a part of such transaction, the holders are permitted to exchange their LLC Units for securities in a transaction that is expected to permit such exchange without current recognition of gain or loss, for U.S. and non-U.S. tax purposes, for the direct and indirect holders of LLC Units (except to the extent that property other than securities is received in such exchange), based on a "should" or "will" level opinion from independent tax counsel of recognized standing and expertise.

(c) Notwithstanding any other provision of this Agreement, in a Disposition Event, payments under or in respect of the Tax Receivable Agreement shall not be considered part of the consideration payable in respect of any LLC Unit or share of Class A Common Stock in connection with such Disposition Event for the purposes of Section 10.04(a) and Section 10.04(b).

Section 10.05 Reservation of Shares of Class A Common Stock; Certificate of Pubco. At all times Pubco shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption or Direct Exchange pursuant to Share Settlements; provided that nothing contained herein shall be construed to preclude Pubco from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of Pubco) or the delivery of cash pursuant to a Cash Settlement. Pubco shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Redemption or Direct Exchange to the extent a registration statement is effective and available for such shares. Pubco covenants that all Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this ARTICLE 10 shall be interpreted and applied in a manner consistent with the corresponding provisions of Pubco's certificate of incorporation.

Section 10.06 Effect of Exercise of Redemption or Exchange Right. This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption or Direct Exchange shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 10.07 Tax Treatment. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree a Redemption or a Direct Exchange, as the case may be, shall be treated as a direct exchange between Pubco and the Redeeming Member for U.S. federal and applicable state and local income tax purposes.

ARTICLE 11

LIMITATION ON LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 11.01 Limitation on Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company; provided that the foregoing shall not alter a Member's obligation to return funds wrongfully distributed to it.

Section 11.02 Exculpation and Indemnification.

(a) Subject to the duties of the Managing Member and Officers set forth inSection 7.01, neither the Managing Member nor any other Covered Person described in clause (iii) of the definition thereof shall be liable, including under any legal or equitable theory of fiduciary duty or other theory of liability, to the Company or to any other Covered Person for any losses, claims, damages or liabilities incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company. There shall be, and each Covered Person shall be entitled to, a presumption that such Covered Person acted in good faith.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such Person's professional or expert competence.

(c) The Company shall indemnify, defend and hold harmless each Covered Person against any losses, claims, damages, liabilities, expenses (including all reasonable out-of-pocket fees and expenses of counsel and other advisors), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, in which such Covered Person may be involved or become subject to, in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document, unless such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount (i) is a result of a Covered Person not acting in good faith on behalf of the Company or arose as a result of the willful commission by such Covered Person of any act that is dishonest and materially injurious to the Company, (ii) results from its contractual obligations under any Reorganization Document to be performed in a capacity other than as a Covered Person or from the breach by such Covered Person of Section 9.01 or (iii) results from the breach by any Member (in such capacity) of its contractual obligations under this Agreement. If any Covered Person becomes involved in any capacity in any action, suit, proceeding or investigation in connection

with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document (other than any Reorganization Document), other than (x) by reason of any act or omission performed or omitted by such Covered Person that was not in good faith on behalf of the Company or constituted a willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company or (y) as a result of any breach by such Covered Person of Section 9.01, the Company shall reimburse such Covered Person for its reasonable legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; provided that such Covered Person shall promptly repay to the Company the amount of any such reimbursed expenses paid to it if it shall be finally judicially determined that such Covered Person was not entitled to indemnification by, or contribution from, the Company in connection with such action, suit, proceeding or investigation. If for any reason (other than the bad faith of a Covered Person or the willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company) the foregoing indemnification is unavailable to such Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount in such proportion as is appropriate to reflect any relevant equitable considerations. There shall be, and each Covered Person shall be entitled to, a rebuttable presumption that such Covered Person acted in good faith.

(d) The obligations of the Company under Section 11.02(c) shall be satisfied solely out of and to the extent of the Company's assets, and no Covered Person shall have any personal liability on account thereof.

(e) Given that certain Jointly Indemnifiable Claims may arise by reason of the service of a Covered Person to the Company and/or as a director, trustee, officer, partner, member, manager, employee, consultant, fiduciary or agent of other corporations, limited liability companies, partnerships, joint ventures, trusts, employee benefit plans or other enterprises controlled by the Company (collectively, the "**Controlled Entities**"), or by reason of any action alleged to have been taken or omitted in any such capacity, the Company acknowledges and agrees that the Company shall, and to the extent applicable shall cause the Controlled Entities to, be fully and primarily responsible for the payment to the Covered Person in respect of indemnification or advancement of all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements) in each case, actually and reasonably incurred by or on behalf of a Covered Person in connection with either the investigation, defense or appeal of a claim, demand, action, suit or proceeding or establishing or enforcing a right to indemnification under this Agreement or otherwise incurred in connection with a claim that is indemnifiable hereunder (collectively, "**Expenses**") in connection with any such Jointly Indemnifiable Claim, pursuant to and in accordance with (as applicable) the terms of (i) the Delaware Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership, certificate of qualification or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the "**Indemnification Sources**"), irrespective of any right of recovery the Covered Person may have from the Indemnitee-Related Entities. Under no circumstance shall the Company

or any Controlled Entity be entitled to any right of subrogation or contribution by the Indemnitee-Related Entities and no right of advancement or recovery the Covered Person may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Indemnitee-Related Entities shall make any payment to the Covered Person in respect of indemnification or advancement of Expenses with respect to any Jointly Indemnifiable Claim, (i) the Company shall, and to the extent applicable shall cause the Controlled Entities to, reimburse the Indemnitee-Related Entity making such payment to the extent of such payment promptly upon written demand from such Indemnitee-Related Entity, to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (i), the Indemnitee-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (iii) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnitee-Related Entities effectively to bring suit to enforce such rights. The Company and the Covered Person agree that each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Section 11.02(e), entitled to enforce this Section 11.02(e) as though each such Indemnitee-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 11.02(e) as though each such Controlled Entity was the "Company" under this Agreement. For purposes of this Section 11.02(e), the following terms shall have the following meanings:

(i) The term "**Indemnitee-Related Entities**" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification or advancement of Expenses with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification or advancement obligation.

(ii) The term "**Jointly Indemnifiable Claims**" shall be broadly construed and shall include, without limitation, any claim, demand, action, suit or proceeding for which the Covered Person shall be entitled to indemnification or advancement of Expenses from both (i) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (ii) any Indemnitee-Related Entity pursuant to any other agreement between any Indemnitee-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Indemnitee-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Indemnitee-Related Entity, on the other hand.

ARTICLE 12

DISSOLUTION AND TERMINATION

Section 12.01 Dissolution.

(a) The Company shall not be dissolved by the admission of Additional Members or Substitute Members pursuant to Section 3.03.

(b) No Member shall (i) resign from the Company prior to the dissolution and winding up of the Company except in connection with a Transfer or redemption of Units pursuant to the terms of this Agreement or (ii) take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Applicable Law, hereby waives any rights to take any such actions under Applicable Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Delaware Act.

(c) The Company shall be dissolved and its business wound up only upon the earliest to occur of any one of the following events (each a "**Dissolution Event**"):

(i) The expiration of forty-five (45) days after the sale or other disposition of all or substantially all the assets of the Company;

(ii) upon the approval of the Managing Member;

(iii) the entry of a decree of dissolution of the Company under §18-802 of the Delaware Act; or

(iv) at any time there are no members of the Company, unless the Company is continued in accordance with the Delaware Act.

(d) The death, retirement, resignation, expulsion, bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member of the Company shall not in and of itself cause dissolution of the Company.

Section 12.02 Winding Up of the Company.

(a) The Managing Member shall promptly notify the other Members of any Dissolution Event. Upon dissolution, the Company's business shall be liquidated in an orderly manner. The Managing Member shall appoint a liquidating trustee to wind up the affairs of the Company pursuant to this Agreement. In performing its duties, the liquidating trustee is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Company in accordance with the Delaware Act and in any reasonable manner that the liquidating trustee shall determine to be in the best interest of the Members.

(b) The proceeds of the liquidation of the Company shall be distributed in the following order and priority:

(i) first, to the creditors (including any Members or their respective Affiliates that are creditors) of the Company in satisfaction of all of the Company's liabilities (whether by payment or by making reasonable provision for payment thereof, including the setting up of any reserves which are, in the judgment of the liquidating trustee, reasonably necessary therefor);

(ii) second, to Pubco in respect of the Preferred Units, until Pubco has received an amount equal to the total amount that would then be required to be distributed by Pubco in respect of all outstanding shares of Pubco Preferred Stock if Pubco were to then liquidate, dissolve and/or wind up (generally equal to the Liquidation Preference plus the Liquidation Coupon Amount (each, as defined in the Certificate of Designations)); and

(iii) thereafter, to the LLC Members in the same manner as distributions are made under Section 5.03(b)(ii) (taking into account Section 5.03(b)(iii)).

(c) Distribution of Property. In the event it becomes necessary in connection with the liquidation of the Company to make a distribution of Property in-kind, subject to the priority set forth in Section 12.02, the liquidating trustee shall have the right to compel each Member to accept a distribution of any Property in-kind (with such Property, as a percentage of the total liquidating distributions to such Member, corresponding as nearly as possible to such Member's Percentage Interest), with such distribution being based upon the amount of cash that would be distributed to such Members if such Property were sold for an amount of cash equal to the fair market value of such Property, as determined by the liquidating trustee in good faith, subject to the last sentence of Section 5.03(d).

(d) In the event of a dissolution pursuant to Section 12.01(c), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 10.01(b) in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with Applicable Laws.

Section 12.03 Termination. The Company shall terminate when all of the assets of the Company, after payment of or reasonable provision for the payment of all debts and liabilities of the Company, shall have been distributed to the Members in the manner provided for in this ARTICLE 12, and the certificate of formation of the Company shall have been cancelled in the manner required by the Delaware Act.

Section 12.04 Survival. Termination, dissolution, liquidation or winding up of the Company for any reason shall not release any party from any liability which at the time of such termination, dissolution, liquidation or winding up already had accrued to any other party or which thereafter may accrue in respect to any act or omission prior to such termination, dissolution, liquidation or winding up.

ARTICLE 13

MISCELLANEOUS

Section 13.01 Expenses. Other than as set forth in Section 4.12 of the Reorganization Agreement or as provided for in the Tax Receivable Agreement, the Company shall (a) pay, or cause to be paid, all costs, fees, operating expenses, administrative expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company) incurred in pursuing and conducting, or otherwise related to, the business of the Company and (b) in the sole discretion of the Managing Member, reimburse the Managing Member for any reasonable out-of-pocket costs, fees and expenses incurred by it or its Subsidiaries in connection therewith. For any expenses, liabilities or other obligations that are related to the business conducted by the Company and/or its Subsidiaries, the Managing Member shall cause the Company to pay or bear all such expenses, liabilities and other obligations of the Managing Member or its Subsidiaries, including, (i) costs of any securities offerings (including any underwriters discounts and commissions), investment or acquisition transaction (whether or not successful) not borne directly by Members, (ii) compensation and meeting costs of its board of directors, (iii) cost of periodic reports to its stockholders, (iv) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, Pubco, (v) accounting and legal costs, (vi) franchise taxes (which are not based on, or measured by, income), (vii) payments in respect of Indebtedness and preferred stock, to the extent the proceeds are used or will be used by Pubco or its Subsidiaries to pay expenses or other obligations described in this Section 13.01 (in either case only to the extent economically equivalent Indebtedness or Equity Securities of the Company were not issued to Pubco or its Subsidiaries), (viii) payments representing interest with respect to payments not made when due under the terms of the Tax Receivable Agreement, (ix) other fees and expenses in connection with the maintenance of the existence of Pubco and its Subsidiaries (including any costs or expenses associated with being a public company listed on a national securities exchange) and (x) any obligations owed to any intervening third-party creditors in respect of any amounts in the foregoing clauses (i) through (ix); provided that the Company shall not pay or bear any income tax obligations of the Managing Member or its Subsidiaries pursuant to this provision. Payments under this Section 13.01 are intended to constitute reasonable compensation for past or present services and are not "distributions" within the meaning of § 18-607 of the Delaware Act. For the avoidance of doubt, Pubco shall be considered a third-party creditor of the Company with respect to the any amounts owed pursuant to this Section 13.01 and shall be entitled to all remedies available to a third-party creditor to enforce the Company's obligations to make payments under this Section 13.01.

Section 13.02 Further Assurances. Each Member agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Managing Member, may be necessary or advisable to carry out the intent and purposes of this Agreement.

Section 13.03 Notices. Any notice or other communication required or permitted hereunder shall be in writing and (except as otherwise provided in this Agreement) shall be deemed to have been duly given on the date of service if served personally; three (3) Business Days after the date of mailing, if mailed, by first class mail, registered or certified, postage prepaid; one (1) Business Day after delivery to the courier if sent by private courier guaranteeing next day delivery, delivery charges prepaid, or on the date sent, if sent by electronic mail if confirmation of receipt is received; provided that a copy of such notice is sent by one other method under this Section 13.03, and in each case, addressed as follows:

(a) if to the Company, to

Xponential Intermediate Holdings LLC
17877 Von Karman Avenue
Irvine, CA 92614
Attn: John Meloun
Email: john.meloun@xponential.com

With copies (which shall not constitute actual notice) to:

Buchalter, a Professional Corporation
1000 Wilshire Blvd, Suite 1500
Los Angeles, CA 90017-1730
Attn: Jeremy Weitz
Email: jweitz@buchalter.com

(b) if to a Member, to the address contained in the Company's books and records; or

(c) at such other address as the Company or respective Member may, from time to time, designate in a written notice to all of the Members, in the case of the Company, and to the Company and any other Members, in the case of a Member.

All notices, requests and other communications between and among the Company and the Members in the normal course of the business of the Company will be deemed sufficiently given if sent by regular mail, postage prepaid or by facsimile. All references in this Agreement to "written notice," "notice in writing" and similar terms shall be deemed to include notices given by electronic mail, so long as a receipt of such e-mail is requested and received. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:30 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 13.04 Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Except as provided in ARTICLE 8, no Member may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of a Managing Member.

Section 13.05 Jurisdiction.

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party to the notice addressed as provided in Section 13.03 will be deemed effective service of process on such party.

(b) EACH OF THE COMPANY AND THE MEMBERS HEREBY IRREVOCABLY DESIGNATES REGISTERED AGENTS SOLUTIONS, INC. (IN SUCH CAPACITY, THE "**PROCESS AGENT**"), WITH AN OFFICE 1601 S. DUPONT HWY, SUITE 100, DOVER, DELAWARE 19901, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 13.03 OF THIS AGREEMENT AND, TO THE EXTENT A MEMBER IS NOT ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE, AS REQUIRED BY THE LAW OF THE JURISDICTION OF ORGANIZATION OF SUCH MEMBER. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

Section 13.06 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.07 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 13.08 Entire Agreement. This Agreement and the Reorganization Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party, except to the extent provided herein with respect to Indemnitee Related Entities, each of whom are intended third-party beneficiaries of those provisions that specifically related to them with the right to enforce such provisions as if they were a party hereto.

Section 13.09 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 13.10 Amendment.

(a) This Agreement can be amended at any time and from time to time by written instrument signed by each of the Members who together own a majority in interest of the Units then outstanding, provided that no amendment to this Agreement may adversely modify in any material respect the Units (or the rights, preferences or privileges of the Units) then held by any Members in any materially disproportionate manner to those then held by any other Members without the prior written consent of a majority in interest of such disproportionately affected Member or Members.

(b) For the avoidance of doubt: (i) a Managing Member, acting alone, may amend this Agreement, including the Member Schedule, (x) to reflect the admission of new Members or Transfers of Units, each as provided by and in accordance with, the terms of this Agreement and (y) to effect any subdivisions or combinations of Units made in compliance with Section 4.02(d) and (z) to issue additional LLC Units or any new class of Units (whether or not *pari passu* with the LLC Units) in accordance with the terms of this Agreement and to provide that the Members being issued such new Units be entitled to the rights provided to Members; and (ii) any merger, consolidation or other business combination that constitutes a Disposition Event (as

such term is defined in the certificate of incorporation of Pubco) in which the Non-Pubco Members are required to exchange all of their LLC Units pursuant to Section 10.04(b) and receive consideration in such Disposition Event in accordance with the terms ofSection 10.04(b) and other provisions of this Agreement shall not be deemed an amendment hereof; provided that such amendment is only effective upon consummation of such Disposition Event.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 13.11 Confidentiality.

(a) Each Member shall, and shall direct those of its Affiliates and their respective directors, officers, members, stockholders, partners, employees, attorneys, accountants, consultants, trustees and other advisors (the "**Member Parties**") who have access to Confidential Information to, keep confidential and not disclose any Confidential Information to any Person other than a Member Party who agrees to keep such Confidential Information confidential in accordance with this Section 13.11, in each case without the express consent, in the case of Confidential Information acquired from the Company, of the Managing Member or, in the case of Confidential Information acquired from another Member, such other Member, unless:

(i) such disclosure shall be required by Applicable Law;

(ii) such disclosure is reasonably required in connection with any tax audit involving the Company or any Member or its Affiliates;

(iii) such disclosure is reasonably required in connection with any litigation against or involving the Company or any Member; or

(iv) such disclosure is reasonably required in connection with any proposed Transfer of all or any part of such Member's Units in the Company; provided that with respect to any such use of any Confidential Information referred to in thisclause (iv), advance notice must be given to the Managing Member so that it may require any proposed Transferee that is not a Member to enter into a confidentiality agreement with terms substantially similar to the terms of this Section 13.11 (excluding this clause (iv)) prior to the disclosure of such Confidential Information.

(v) such disclosure is of financial and other information of the type typically disclosed to limited partners and limited liability company members (and prospective transferees or investors thereof) and is made to the partners or members of, and/or prospective investors in, Affiliates of the Members and such partner, Member or prospective investor is bound by the confidentiality provisions of a customary non-disclosure agreement entered into with the disclosing party that covers the Confidential Information so disclosed.

(b) "**Confidential Information**" means any information related to the activities of the Company, the Members and their respective Affiliates that a Member may acquire from the Company or the Members, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Member), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member by the Company, or (iii) becomes available to a Member on a non-confidential basis from a third party, provided such third party is not known by such Member, after reasonable inquiry, to be bound by this Agreement or another confidentiality agreement with the Company. Such Confidential Information may include information that pertains or relates to the business and affairs of any other Member or any other Company matters. Confidential Information may be used by a Member and its Member Parties only in connection with Company matters and in connection with the maintenance of its interest in the Company.

(c) In the event that any Member or any Member Parties of such Member is required to disclose any of the Confidential Information, such Member shall use reasonable efforts to provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Member shall use reasonable efforts to cooperate with the Company in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this Section 13.11, such Member and its Member Parties shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information shall be accorded confidential treatment.

Section 13.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.

Section 13.13 Further Action. Each individual married Member who is or becomes a resident of a community property state shall cause his or her spouse to execute a consent of spouse, the form of which is attached hereto as Exhibit B, on the date hereof or the date such Member becomes a resident of a community property state. If an individual married Member is not married on the date hereof but subsequently becomes married and is or becomes a resident of a community property state, then such Member shall cause his or her spouse to execute a consent of spouse, as attached hereto as Exhibit B as of date of such marriage or residency.

ARTICLE 14

ARBITRATION

Section 14.01 Title. The Members shall attempt in good faith to resolve all claims, disputes and other disagreements arising hereunder (each, a "**Dispute**") by negotiation. If a Dispute between Members cannot be resolved in such manner, such Dispute shall, at the request of any Member, after providing written notice to the other Members party to the Dispute, be submitted to arbitration in The City of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The proceeding shall be confidential. The party initially asserting the Dispute (the "Initiating Party") shall notify the other party (the "**Responding Party**") of the name and address of the arbitrator chosen by the Initiating Party and shall specifically describe the Dispute in issue to be submitted to arbitration. Within 30 days of receipt

of such notification, the Responding Party shall notify the Initiating Party of its answer to the Dispute, any counterclaim which it wishes to assert in the arbitration and the name and address of the arbitrator chosen by the Responding Party. If the Responding Party does not appoint an arbitrator during such 30-day period, appointment of the second arbitrator shall be made by the American Arbitration Association upon request of the Initiating Party. The two arbitrators so chosen or appointed shall choose a third arbitrator, who shall serve as president of the panel of arbitrators (the "**Panel**") thus composed. If the two arbitrators so chosen or appointed fail to agree upon the choice of a third arbitrator within 30 days from the appointment of the second arbitrator, the third arbitrator will be appointed by the American Arbitration Association upon the request of the arbitrators or either of the parties. In all cases, the arbitrators must be persons who are knowledgeable about, and have recognized ability and experience in dealing with, the subject matter of the Dispute. The arbitrators will act by majority decisions. Any decision of the arbitrators shall (a) be rendered in writing and shall bear the signatures of at least two arbitrators, and (b) identify the members of the Panel. Absent fraud or manifest error, any such decision of the Panel shall be final, conclusive and binding on the parties to the arbitration and enforceable by a court of competent jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration; *provided, however*, that each party shall pay for and bear the costs of its own experts, evidence and legal counsel, unless the arbitrator rules otherwise in the arbitration. The parties shall complete all discovery within 30 days after the Panel is composed, shall complete the presentation of evidence to the Panel within 15 days after the completion of discovery, and a final decision with respect to the matter submitted to arbitration shall be rendered within 15 days after the completion of presentation of evidence. The Members shall cause to be kept a record of the proceedings of any matter submitted to arbitration hereunder.

ARTICLE 15

REPRESENTATIONS OF MEMBERS

Section 15.01 Representations of Members. Each Member (unless otherwise noted) to which a Unit is issued as of the date of this Agreement represents and warrants to the Company as follows:

(a) The Units issued to such Member, if any, are being acquired for investment for such Member's own account, not as a nominee or agent, and not with a view to or for sale in connection with the distribution thereof.

(b) Such Member has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the Member's investment in the Units; such Member has the ability to bear the economic risks of such investment; such Member has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement; and such Member has had an opportunity to ask questions and to obtain such financial and other information regarding the Company as such Member deems necessary or appropriate in connection with evaluating the merits of the investment in the Units. Such Member acknowledges that the Units have not been and will not be registered under the Securities Act or under any state securities act and may not be transferred except in compliance with the Securities Act and all applicable state laws.

(c) Each Member qualifies as an Accredited Investor within the meaning of Regulation D promulgated under the Securities Act or the acquisition of its interest otherwise qualifies under an applicable exemption from registration under the Securities Act.

[*Signature pages follow***]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

XPONENTIAL INTERMEDIATE HOLDINGS LLC

By: _____
Name: _____
Title: _____

_____

[ADD MEMBER SIGNATURE PAGES]

TAX RECEIVABLE AGREEMENT

among

XPONENTIAL FITNESS, INC.,

XPONENTIAL INTERMEDIATE HOLDINGS, LLC,

and

THE PERSONS NAMED HEREIN

Dated as of [ ], 2021

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TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (as amended from time to time, this "Agreement"), dated as of [ ], 2021, is hereby entered into by and among Xponential Fitness, Inc., a Delaware corporation (the "Corporate Taxpayer"), Xponential Intermediate Holdings, LLC, a Delaware limited liability company ("OpCo"), each of the undersigned parties and each of the other persons from time to time party hereto (each a "TRA Party" and together the "TRA Parties").

WHEREAS, OpCo is treated as a partnership, and the Corporate Taxpayer is classified as an association taxable as a corporation, in each case for U.S. federal income tax purposes;

WHEREAS, following certain reorganization transactions undertaken prior to the IPO (defined below), including a recapitalization of all of the membership interests in OpCo into one class of common units (the "Common Units"), certain TRA Parties hold Common Units;

WHEREAS, following certain reorganization transactions, the Corporate Taxpayer will be the managing member of OpCo and will hold Common Units;

WHEREAS, on and after the date hereof, pursuant to Section [ ] of the LLC Agreement, certain TRA Parties have the right, in their sole discretion, from time to time to require OpCo to redeem (a "Redemption") all or a portion of such TRA Party's Common Units for cash or, at the Corporate Taxpayer's option, shares of Class A common stock, [$0.01] par value per share, of the Corporate Taxpayer (the "Class A Common Stock"); *provided* that, pursuant to Section [ ] of the LLC Agreement and at the election of the Corporate Taxpayer, the Corporate Taxpayer may effect a direct exchange of such cash or shares of Class A Common Stock for such Common Units (a "Direct Exchange," and together with a Redemption, an "Exchange");

WHEREAS, OpCo and each of its direct and indirect subsidiaries treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Internal Revenue Code of 1986, as amended (the "Code"), for each Taxable Year (as defined below) in which an Exchange occurs, which elections are intended generally to result in an adjustment to the tax basis of the assets owned by OpCo (which adjustment will be allocable wholly or, in the case of an adjustment under Section 734(b) of the Code, in part, to the Corporate Taxpayer) at the time of an Exchange (such time, the "Exchange Date") by reason of such Exchange and at the time of receipt of certain payments under this Agreement;

WHEREAS, Rumble Holdings LLC, a Delaware limited liability company (the "Blocker Company") is classified as a corporation for U.S. federal income tax purposes;

WHEREAS, the Blocker Company will be contributed to and then merge with and into the Corporate Taxpayer (the "Merger"), and as a result of the Merger the Corporate Taxpayer will be entitled to utilize certain Blocker Tax Attributes attributable to the Blocker Company;

WHEREAS, the income, gain, loss, expense and other Tax (as defined below) items of the Corporate Taxpayer may be affected by the Tax Attributes (as defined below); and

WHEREAS, the parties to this Agreement desire to make certain arrangements with respect to the effect of the Tax Attributes on the actual liability for Taxes of the Corporate Taxpayer.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

(a) The following terms shall have the following meanings for the purposes of this Agreement:

"Actual Tax Liability" means, with respect to any Taxable Year, the actual liability for U.S. federal, state and local income Taxes of (i) the Corporate Taxpayer and (ii) without duplication, OpCo, but only with respect to Taxes imposed on OpCo and allocable to the Corporate Taxpayer for such Taxable Year.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"Agreed Rate" means a per annum rate of [LIBOR plus 100 basis points].

"Attributable" means, with respect to any applicable TRA Party, the portion of any Realized Tax Benefit (or Realized Tax Detriment) of the Corporate Taxpayer that is derived from Tax Attributes and Imputed Interest that is attributable to (i) the Common Units acquired by the Corporate Taxpayer in an Exchange or (ii) the Blocker Company acquired in the Merger, as applicable, undertaken by or with respect to such TRA Party.

"Basis Adjustment" means the adjustment to the Tax basis of a Reference Asset under Sections 732, 755 and 1012 of the Code and the Treasury Regulations promulgated thereunder (in situations where, as a result of one or more Exchanges, OpCo becomes an entity that is disregarded as separate from its owner for U.S. federal income tax purposes) or under Sections 734(b), 743(b) and 755 of the Code and the Treasury Regulations promulgated thereunder (in situations where, following an Exchange, OpCo remains in existence as an entity for U.S. federal income tax purposes) and, in each case, comparable sections of state and local tax laws, as a result of (i) an Exchange and (ii) the payments made pursuant to this Agreement. For the avoidance of doubt, the amount of any Basis Adjustment resulting from an Exchange of one or more Common Units shall be determined without regard to any Pre-Exchange Transfer of such Common Units and as if any such Pre-Exchange Transfer had not occurred.

A "Beneficial Owner" of a security is a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

"Blended Rate" means, with respect to any Taxable Year, the sum of the effective rates of Tax imposed on the aggregate net income of the Corporate Taxpayer in each state or local jurisdiction in which the Corporate Taxpayer files Tax Returns for such Taxable Year, with the maximum effective rate in any state or local jurisdiction being equal to the product of: (i) the apportionment factor on the income or franchise Tax Return filed by the Corporate Taxpayer in such jurisdiction for such Taxable Year, and (ii) the maximum applicable corporate tax rate in effect in such jurisdiction in such Taxable Year. As an illustration of the calculation of Blended Rate for a Taxable Year, if the Corporate Taxpayer solely files Tax Returns in State 1 and State 2 in a Taxable Year, the maximum applicable corporate tax rates in effect in such states in such Taxable Year are 6% and 5%, respectively and the apportionment factors for such states in such Taxable Year are 60% and 40%, respectively, then the Blended Rate for such Taxable Year is equal to 5.6% (i.e., 6% times 60% plus 5% times 40%).

"Blocker Company" is defined in the recitals to this Agreement.

"Blocker Tax Attributes" means, with respect to a TRA Party, (i) the Blocker Transferred Basis and (ii) thePre-IPO NOLs with respect to such TRA Party.

"Blocker Transferred Basis" means, with respect to a TRA Party, the share of Tax basis of the Reference Assets that are amortizable under Section 197 of the Code or that are otherwise reported as amortizable or depreciable on IRS Form 4562 for U.S. federal income Tax purposes attributable to the Common Units acquired by the Corporate Taxpayer from the Blocker Company in the Merger.

"Board" means the board of directors of the Corporate Taxpayer.

"Business Day" shall have the meaning ascribed to such term in the LLC Agreement.

"Change of Control" means the occurrence of any of the following events:

(i) any Person or any group of Persons acting together which would constitute a "group" for purposes of Section 13(d) of the Securities and Exchange Act of 1934, or any successor provisions thereto, excluding (x) a corporation or other entity owned, directly or indirectly, by the stockholders of the Corporate Taxpayer in substantially the same proportions as their ownership of stock in the Corporate Taxpayer and (y) any Member (as defined in the LLC Agreement) or any of its Affiliates who is or becomes the Beneficial Owner, directly or indirectly, of securities of the Corporate Taxpayer representing more than 50% of the combined voting power of the Corporate Taxpayer's then outstanding voting securities; or

(ii) the following individuals cease to constitute a majority of the number of directors of the Corporate Taxpayer then serving: individuals who, on the IPO Date, constitute the Board and any new director whose appointment or election by the Board or nomination for election by the Corporate Taxpayer's shareholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were directors on the IPO Date or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (ii); or

(iii) there is consummated a merger or consolidation of the Corporate Taxpayer with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (x) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (y) the voting securities of the Corporate Taxpayer immediately prior to such merger or consolidation do not continue to represent or are not converted into more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(iv) the shareholders of the Corporate Taxpayer approve a plan of complete liquidation or dissolution of the Corporate Taxpayer or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer's assets, other than such sale or other disposition by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporate Taxpayer in substantially the same proportions as their ownership of the Corporate Taxpayer immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii) and clause (iii)(x) above, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of the Corporate Taxpayer immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporate Taxpayer immediately following such transaction or series of transactions.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Corporate Taxpayer Return" means the U.S. federal and/or state and/or local Tax Return, as applicable, of the Corporate Taxpayer filed with respect to Taxes of any Taxable Year.

"Cumulative Net Realized Tax Benefit" for a Taxable Year means the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporate Taxpayer, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

"Default Rate" means a per annum rate of [LIBOR plus 300 basis points].

"Determination" shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of state and local tax law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax and shall also include the acquiescence of the Corporate Taxpayer to the amount of any assessed liability for Tax.

"Direct Exchange" is defined in the recitals to this Agreement.

"Early Termination Date" means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

"Early Termination Rate" means a per annum rate of the lesser of (i) [6.5]% per annum, compounded annually, and (ii) [LIBOR plus 300 basis points].

"Exchange" is defined in the recitals to this Agreement.

"Exchange Date" is defined in the recitals to this Agreement.

"Existing Basis" means, with respect to a TRA Party, the share of Tax basis of the Reference Assets that is amortizable under Section 197 of the Code or that is otherwise reported as amortizable or depreciable on IRS Form 4562 for United States federal income Tax purposes attributable to the Common Units transferred to the Corporate Taxpayer in an Exchange.

"Governmental Authority" has the meaning set forth in the LLC Agreement.

"Hypothetical Federal Tax Liability" means, with respect to any Taxable Year, the liability for U.S. federal income Taxes of (i) the Corporate Taxpayer and (ii) without duplication, OpCo, but only with respect to U.S. federal income Taxes imposed on OpCo and allocable to the Corporate Taxpayer, in each case using the same methods, elections, conventions and similar practices used on the relevant Corporate Taxpayer Return, but (v) using the Non-Stepped Up Tax Basis, the Non-Exchange Basis and the Non-Blocker Transferred Basis, in each case, as reflected on the applicable Attribute Schedule, including amendments thereto for the Taxable Year, (w) excluding any deduction attributable to Pre-IPO NOLs for the Taxable Year (x) excluding any deduction attributable to Imputed Interest for the Taxable Year, (y) deducting the Hypothetical Other Tax Liability (rather than any amount for state, local or foreign tax liabilities) for such Taxable Year to the extent state and local taxes are deductible for the applicable entity and (z) without taking into account the carryover or carryback of any Tax item (or portions thereof) that is attributable to or (without duplication) available for use because of the prior use of any of the Tax Attributes.

"Hypothetical Other Tax Liability" means, with respect to any Taxable Year, U.S. federal taxable income determined in connection with calculating the Hypothetical Federal Tax Liability for such Taxable Year (determined without regard to clause (y) thereof) multiplied by the Blended Rate for such Taxable Year.

"Hypothetical Tax Liability" means, with respect to any Taxable Year, the Hypothetical Federal Tax Liability for such Taxable Year, plus the Hypothetical Other Tax Liability for such Taxable Year.

"Imputed Interest" shall mean any interest imputed under Section 1272, 1274 or 483 or other provision of the Code and any similar provision of state and local tax law with respect to the Corporate Taxpayer's payment obligations under this Agreement.

"IPO" means the initial public offering of Class A Common Stock of the Corporate Taxpayer.

"IPO Date" means the closing date of the IPO.

"IRS" means the U.S. Internal Revenue Service.

"LIBOR" means during any period, the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Corporate Taxpayer as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (an "Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the first day of such period as the London interbank offered rate for U.S. dollars having a borrowing date and a maturity comparable to such period. If the Corporate Taxpayer has made the determination (such determination to be conclusive absent manifest error) that (i) LIBOR is no longer a widely recognized benchmark rate for newly originated loans in the U.S. loan market in U.S. dollars or (ii) the applicable supervisor or administrator (if any) of LIBOR has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans in the U.S. loan market in U.S. dollars, then the Corporate Taxpayer shall (as determined by the Corporate Taxpayer to be consistent with market practice generally), establish a replacement interest rate (the "Replacement Rate"), in which case, the Replacement Rate shall, subject to the next two sentences, replace LIBOR for all purposes under this Agreement. In connection with the establishment and application of the Replacement Rate, this Agreement shall be amended solely with the consent of the Corporate Taxpayer and OpCo, as may be necessary or appropriate, in the reasonable judgment of the Corporate Taxpayer, to effect the provisions of this section. The Replacement Rate shall be applied in a manner consistent with market practice; provided that, in each case, to the extent such market practice is not administratively feasible for the Corporate Taxpayer, such Replacement Rate shall be applied as otherwise reasonably determined by the Corporate Taxpayer.

"LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of OpCo, dated as of the date hereof.

"Market Value" shall mean the closing price of the Class A Common Stock on the applicable Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Common Stock is then traded or listed, as reported by the *Wall Street Journal*; provided, that if the closing price is not reported by the *Wall Street Journal* for the applicable Exchange Date, then the Market Value shall mean the closing price of the Class A Common Stock on the Business Day immediately preceding such Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Common Stock is then traded or listed, as reported by the *Wall Street Journal*; provided, further, that if the Class A Common Stock is not then listed on a national securities exchange or interdealer quotation system, the Market Value shall mean the cash consideration paid for Class A Common Stock, or the fair market value of the other property delivered for Class A Common Stock, as determined by the Board in good faith..

"Merger" is defined in the recitals to this Agreement.

"Non-Blocker Transferred Basis" means, with respect to any Reference Asset at the time of the Merger that is amortizable under Section 197 of the Code or that is otherwise reported as amortizable or depreciable on IRS Form 4562 for United States federal income Tax purposes, the Tax basis that such Reference Asset would have had if the Blocker Transferred Basis at the time of the Merger was equal to zero.

"Non-Exchange Basis" means with respect to any Reference Asset at the time of an Exchange that is amortizable under Section 197 of the Code or that is otherwise reported as amortizable or depreciable on IRS Form 4562 for United States federal income Tax purpose, the Tax basis that such Reference Asset would have had if the Existing Basis of such Reference Asset at the time of the Exchange was equal to zero.

"Non-Stepped Up Tax Basis" means, with respect to any Reference Asset at any time, the Tax basis that such asset would have had at such time if no Basis Adjustments had been made.

"Payment Date" means any date on which a payment is required to be made pursuant to this Agreement.

"Person" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

"Pre-Exchange Transfer" means any transfer or distribution in respect of one or more Common Units (i) that occurs prior to an Exchange of such Common Units, and (ii) to which Section 743(b) or 734(b) of the Code applies.

"Pre-IPO NOLs" means, without duplication, the net operating losses, capital losses, disallowed interest expense carryforwards under Section 163(j) of the Code, and credit carryforwards of the Blocker Company relating to taxable periods ending on or prior to the IPO Date. Notwithstanding the foregoing, the term "Pre-IPO NOLs" shall not include any Tax attribute of the Blocker Company that is used to offset Taxes of the Blocker Company, if such offset Taxes are attributable to taxable periods (or a portion thereof) ending on or prior to the date of the applicable Merger.

"Realized Tax Benefit" means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination with respect to such Actual Tax Liability.

"Realized Tax Detriment" means, for a Taxable Year, the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination with respect to such Actual Tax Liability.

"Redemption" has the meaning in the recitals to this Agreement.

"Reference Asset" means an asset (including an item of deferred revenue) that is held by OpCo, or by any of its direct or indirect Subsidiaries treated as a partnership or disregarded entity for purposes of the applicable Tax, at the time of the Merger, the IPO or an Exchange, as relevant. A Reference Asset also includes any asset that is "substituted basis property" under Section 7701(a)(42) of the Code with respect to a Reference Asset.

"Schedule" means any of the following: (i) an Attribute Schedule, (ii) a Tax Benefit Schedule, or (iii) the Early Termination Schedule.

"Subsidiaries" shall have the meaning ascribed to such term in the LLC Agreement.

"Subsidiary Stock" means any stock or other equity interest in any Subsidiary of the Corporate Taxpayer that is (i) treated as a corporation for U.S. federal income tax purposes and (ii) a member of an affiliated or consolidated group of corporations that files a consolidated income tax return pursuant to Sections 1501 et seq. of the Code with respect to which the Corporate Taxpayer is a member.

"Tax Attributes" means collectively (i) the Blocker Tax Attributes (ii) Existing Basis, (iii) Basis Adjustments and (iv) Imputed Interest.

"Tax Return" means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including any information return, claim for refund, amended return and declaration of estimated Tax.

"Taxable Year" means a taxable year of the Corporate Taxpayer as defined in Section 441(b) of the Code or comparable section of state or local tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made), ending on or after the IPO Date.

"Taxes" means any and all taxes, assessments or similar charges that are based on or measured with respect to net income or profits, and any interest related to such Tax.

"Taxing Authority" shall mean any domestic, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

"Treasury Regulations" means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

"Valuation Assumptions" shall mean, as of an Early Termination Date, the assumptions that (1) in each Taxable Year ending on or after such Early Termination Date, the Corporate Taxpayer will have taxable income sufficient to fully utilize the deductions arising from the Tax Attributes during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available, (2) the U.S. federal income tax rates and state and local income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date, and Tax Attributes will be deemed to offset income of the Corporate Taxpayer at the highest marginal federal and relevant state and local income tax rates applicable to a corporation in such Taxable Year (and the Blended Rate will be calculated based on such rates and the apportionment factors applicable in such Taxable Year), (3) any Pre-IPO NOLs or loss or credit carryovers generated by deductions arising from Tax Attributes that are available as of such Early Termination Date will be utilized by the Corporate Taxpayer on a pro rata basis from the Early Termination Date through the scheduled expiration date thereof or, if there is no scheduled expiration date, the twentieth anniversary of the generation of such Pre-IPO NOLs or loss or credit carryovers, (4) any non-amortizable assets (other than Subsidiary Stock) will be disposed of on the fifteenth anniversary of the applicable Exchange (in the case of Basis Adjustments or Existing Basis) or the IPO Date (in the case of Blocker Transferred Basis) for an amount sufficient to fully utilize the adjusted basis of such assets, including any adjustments under Section 734 and 743 of the Code (and, in each case, the comparable sections of U.S. state and local law); provided, that in the event of a Change of Control that includes the sale of such asset (or the sale of equity interests in a partnership or disregarded entity for U.S. federal income tax purposes that directly or indirectly owns such asset), such non-amortizable assets shall be deemed disposed of at the time of the direct or indirect sale of the relevant asset in such Change of Control (if earlier than such fifteenth anniversary) for such price, (5) any Subsidiary Stock will be deemed never to be disposed of and (6) if, at the Early Termination Date, there are Common Units that have not been Exchanged, then each such Common Unit shall be deemed to be Exchanged for the product of (i) the Market Value of the Class A Common Stock on the Early Termination Date and (ii) the number of shares of Class A Common Stock that would be transferred in respect of such Common Unit if the Exchange occurred on the Early Termination Date.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Advance Payment	Section 3.01(b)
Agreement	Preamble
Amended Schedule	2.03(b)
Attribute Schedule	Section 2.01
Code	Recitals
Common Units	Recitals
Corporate Taxpayer	Preamble
Dispute	7.03(a)
Early Termination Effective Date	4.02
Early Termination Notice	4.02
Early Termination Payment	4.03(b)
Early Termination Schedule	4.02
e-mail	7.01
Exchange Date	Recitals
Expert	7.09
Interest Amount	3.01(b)
Material Objection Notice	4.02
Net Tax Benefit	3.01(b)
Objection Notice	2.03(a)
OpCo	Recitals
Reconciliation Dispute	7.09
Reconciliation Procedures	2.03(a)
Senior Obligations	5.01
Tax Benefit Payment	3.01(b)
Tax Benefit Schedule	2.02(a)
TRA Party	Preamble

(c) Other Definitional and Interpretative Provisions. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form.

References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II

DETERMINATION OF REALIZED TAX BENEFIT

Section 2.01 Basis Adjustment. Within 150 calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for each relevant Taxable Year, the Corporate Taxpayer shall deliver to each TRA Party a schedule (the "Attribute Schedule") that shows, in reasonable detail necessary to perform the calculations required by this Agreement, (i) the amount of Blocker Tax Attributes available to the Corporate Taxpayer in such Taxable Year and the period (or periods) over which such Pre-IPO NOLs are usable, (ii) the Non-Stepped Up Tax Basis of the Reference Assets as of each applicable Exchange Date, if any, (iii) the Basis Adjustments with respect to the Reference Assets as a result of each Exchange effected in such Taxable Year, calculated (x) in the aggregate, and (y) solely with respect to Exchanges by such TRA Party, (iv) the period (or periods) over which the Reference Assets are amortizable and/or depreciable and (v) the period (or periods) over which each Basis Adjustment is amortizable and/or depreciable. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest.

Section 2.02 Realized Tax Benefit and Realized Tax Detriment

(a) Tax Benefit Schedule. Within 150 calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for any Taxable Year in which there is a Realized Tax Benefit or a Realized Tax Detriment Attributable to a TRA Party, the Corporate Taxpayer shall provide to such TRA Party a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment and the portion Attributable to such TRA Party for such Taxable Year (a "Tax Benefit Schedule"). The Tax Benefit Schedule will become final as provided in Section 2.03(a) and may be amended as provided in Section 2.03(b) (subject to the procedures set forth in Section 2.03(b)).

(b) Applicable Principles. The Realized Tax Benefit or Realized Tax Detriment for each Taxable Year is intended to measure the decrease or increase in the Actual Tax Liability of the Corporate Taxpayer for such Taxable Year attributable to the Tax Attributes, determined using a "with and without" methodology and, for the avoidance of doubt, is not intended to take into account, and shall be interpreted in a manner that avoids taking into account, any Tax Attribute more than once. For the avoidance of doubt, the Actual Tax Liability will take into account the deduction of the portion of the Tax Benefit Payment that must be accounted for as interest under the Code based upon the characterization of Tax Benefit Payments as additional consideration payable by the Corporate Taxpayer for the Common Units acquired in an Exchange. Carryovers or carrybacks of any Tax item attributable to any Tax

Attribute shall be considered to be subject to the rules of the Code and the Treasury Regulations or the appropriate provisions of U.S. state and local income and franchise tax law, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any Tax item includes a portion that is attributable to a Tax Attribute and another portion that is not, such portions shall be considered to be used in accordance with the "with and without" methodology. The parties agree that (i) all Tax Benefit Payments (other than amounts accounted for as interest under the Code) made to TRA Parties that transferred shares of the Blocker Company to the Corporate Taxpayer will be treated as non-qualifying property or money received in the Merger for purposes of Sections 356 of the Code, and (ii) all Tax Benefit Payments made to TRA Parties other than transferors of the Blocker Company will be treated as subsequent upward purchase price adjustments in respect of the relevant Exchange that give rise to further Basis Adjustments to Reference Assets for the Corporate Taxpayer in the year of payment, and as a result, such additional Basis Adjustments will be incorporated into the current year calculation and into future year calculations, as appropriate.

Section 2.03 Procedures, Amendments.

(a) Procedure. Every time the Corporate Taxpayer delivers to a TRA Party an applicable Schedule under this Agreement, including any Amended Schedule delivered pursuant to Section 2.03(b) and any Early Termination Schedule or amended Early Termination Schedule, the Corporate Taxpayer shall also (x) deliver to such TRA Party schedules and work papers, as determined by the Corporate Taxpayer or requested by such TRA Party, providing reasonable detail regarding the preparation of the Schedule and (y) allow such TRA Party reasonable access to the appropriate representatives at the Corporate Taxpayer, as determined by the Corporate Taxpayer, in connection with a review of such Schedule. Without limiting the application of the preceding sentence, each time the Corporate Taxpayer delivers to a TRA Party a Tax Benefit Schedule, in addition to the Tax Benefit Schedule duly completed, the Corporate Taxpayer shall deliver to such TRA Party the relevant Corporate Taxpayer Return, the reasonably detailed calculation by the Corporate Taxpayer of the Hypothetical Tax Liability, the reasonably detailed calculation by the Corporate Taxpayer of the Actual Tax Liability, as well as any other work papers as determined by the Corporate Taxpayer or requested by such TRA Party, provided that the Corporate Taxpayer shall be entitled to redact any information that it reasonably believes is unnecessary for purposes of determining the items in the applicable Schedule or amendment thereto. An applicable Schedule or amendment thereto shall become final and binding on the applicable TRA Party and the Corporate Taxpayer thirty (30) calendar days from the first date on which the TRA Party has received the applicable Schedule or amendment thereto unless such TRA Party (i) within thirty (30) calendar days after receiving an applicable Schedule or amendment thereto, provides the Corporate Taxpayer with notice of a material objection to such Schedule ("Objection Notice") made in good faith or (ii) provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver is received by the Corporate Taxpayer. If the applicable TRA Party and the Corporate Taxpayer for any reason, are unable to successfully resolve the issues raised in the Objection Notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of an Objection Notice, the Corporate Taxpayer and the applicable TRA Party shall employ the reconciliation procedures as described in Section 7.09 (the "Reconciliation Procedures").

(b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporate Taxpayer (i) in connection with a Determination affecting such Schedule, (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to the applicable TRA Party, (iii) to comply with the Expert's determination under the Reconciliation Procedures, (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year, or (vi) to adjust the Attribute Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an "Amended Schedule"). The Corporate Taxpayer shall provide an Amended Schedule to each relevant TRA Party within thirty (30) calendar days of the occurrence of an event referenced in clauses (i) through (vi) of the preceding sentence.

ARTICLE III

TAX BENEFIT PAYMENTS

Section 3.01 Payments.

(a) Within five (5) Business Days after the Tax Benefit Schedule with respect to a Taxable Year delivered to any TRA Party becomes final in accordance with Section 2.03(a), the Corporate Taxpayer shall pay to such TRA Party for such Taxable Year the Tax Benefit Payment in the amount determined pursuant to Section 3.01(b). Each such Tax Benefit Payment to a TRA Party (including any Advance Payment) shall be made by wire transfer of immediately available funds to the bank account previously designated by such TRA Party to the Corporate Taxpayer or as otherwise agreed by the Corporate Taxpayer and such TRA Party. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated Tax payments, including federal estimated income tax payments. Notwithstanding any provision of this Agreement to the contrary, any TRA Party may elect with respect to any Exchange to limit the aggregate Tax Benefit Payments made to such TRA Party in respect of any such Exchange to a specified percentage of the amount equal to the sum of (A) the cash, excluding any Tax Benefit Payments, and (B) the Market Value of the Class A Shares received by such TRA Party on such Exchange (or such other limitation selected by the TRA Party and consented to by the Corporate Taxpayer, which consent shall not be unreasonably withheld). The TRA Party shall exercise its rights under the preceding sentence by notifying the Corporate Taxpayer in writing of its desire to impose such a limit and the specified percentage (or such other limitation selected by the TRA Party) and such other details as may be necessary (including whether such limit includes the Imputed Interest in respect of any such Exchange) in such manner and at such time (but in no event later than the date of any such Exchange) as reasonably directed by the Corporate Taxpayer; provided, however, that, in the absence of such direction, the TRA Party shall give such written notice in the same manner as is required by Section 7.01 of this Agreement contemporaneously with TRA Party's notice to the Corporate Taxpayer of the applicable Exchange.

(b) A "Tax Benefit Payment" means, with respect to a TRA Party, an amount, not less than zero, equal to the sum of the amount of the Net Tax Benefit Attributable to such TRA Party and the related Interest Amount. For the avoidance of doubt, for Tax purposes, the Interest Amount shall not be treated as interest but instead shall be treated as additional consideration in the applicable transaction, unless otherwise required by law. Subject to Section 3.03(a), the "Net Tax Benefit" for a Taxable Year shall be an amount equal to the excess, if any, of 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over the total amount of Tax Benefit Payments previously made under this Section 3.01 (excluding payments attributable to Interest Amounts) and, without duplication, any Advance Payments previously made under this Section 3.01 (excluding any portion of Advance Payments in respect of anticipated Interest Amounts); provided, for the avoidance of doubt, that such TRA Party shall not be required to return any portion of any previously made Tax Benefit Payment. The "Interest Amount" shall equal the interest on the amount of the Net Tax Benefit Attributable to such TRA Party calculated at the Agreed Rate from the due date (without extensions) for filing the Corporate Taxpayer Return with respect to Taxes for such Taxable Year until the Payment Date of the applicable Tax Benefit Payment, including, for the avoidance of doubt, Advance Payments. "Advance Payments" in respect of a TRA Party for a Taxable Year means the payments made by the Corporate Taxpayer to such TRA Party as an advance of such TRA Party's anticipated Tax Benefit Payment for such Taxable Year (which, if made, shall be treated as Tax Benefit Payments for purposes of this Agreement). The Corporate Taxpayer shall be entitled at its option to make Advance Payments; provided that, if the Corporate Taxpayer makes Advance Payments, it shall make Advance Payments to all parties eligible to receive payments under this Agreement with respect to a particular Taxable Year in proportion to their respective amount of anticipated payments under this Agreement in respect of such Taxable Year. Notwithstanding the foregoing, for each Taxable Year ending on or after the date of a Change of Control, all Tax Benefit Payments shall be calculated by utilizing Valuation Assumptions (1), (3), (4) and (5), substituting in each case the terms "the closing date of a Change of Control" for an "Early Termination Date."

Section 3.02 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. The provisions of this Agreement shall be construed in the appropriate manner to ensure such intentions are realized.

Section 3.03 Pro Rata Payments.

(a) Notwithstanding anything in Section 3.01 to the contrary, to the extent that the aggregate Tax benefit of the Corporate Taxpayer's reduction in Tax liability as a result of the Tax Attributes under this Agreement is limited in a particular Taxable Year because the Corporate Taxpayer does not have sufficient taxable income to fully utilize available deductions and other attributes, the limitation on the Tax benefit for the Corporate Taxpayer shall be allocated among the TRA Parties in proportion to the respective amounts of Tax Benefit Payments that would have been determined under this Agreement if the Corporate Taxpayer had sufficient taxable income so that there were no such limitation; provided, that for purposes of allocating among the TRA Parties the aggregate Tax Benefit Payments under this Agreement with respect to any Taxable Year, the operation of this Section 3.03(a) with respect to any prior Taxable Year shall be taken into account, it being the intention of the Corporate Taxpayer and the TRA Parties for each TRA Party to receive, in the aggregate, Tax Benefit Payments in proportion to the aggregate Net Tax Benefits Attributable to such TRA Party had this Section 3.03(a) never operated.

(b) After taking into account Section 3.03(a), if for any reason the Corporate Taxpayer does not fully satisfy its payment obligations to make all Tax Benefit Payments due under this Agreement in respect of a particular Taxable Year, then the Corporate Taxpayer and the TRA Parties agree that (i) the Corporate Taxpayer shall pay the same proportion of each Tax Benefit Payment due under this Agreement in respect of such Taxable Year, without favoring one obligation over the other, and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments in respect of prior Taxable Years have been made in full.

(c) To the extent the Corporate Taxpayer makes a payment to a TRA Party in respect of a particular Taxable Year under Section 3.01(a) of this Agreement (taking into account Section 3.03(a) and (b), but excluding payments attributable to Interest Amounts) in excess of the amount of such payment that should have been made to such TRA Party in respect of such Taxable Year, then (i) such TRA Party shall not receive further payments under Section 3.01(a) until such TRA Party has foregone an amount of payments equal to such excess and (ii) the Corporate Taxpayer shall pay the amount of such TRA Party's foregone payments to the other TRA Parties in a manner such that each of the other TRA Parties, to the maximum extent possible, shall have received aggregate payments under Section 3.01(a) of this Agreement (excluding payments attributable to Interest Amounts) in the amount it would have received if there had been no excess payment to such TRA Party.

ARTICLE IV

TERMINATION

Section 4.01 Termination, Early Termination and Breach of Agreement.

(a) Unless terminated earlier pursuant to Section 4.01(b) or Section 4.01(c), this Agreement will terminate when there is no further potential for a Tax Benefit Payment pursuant to this Agreement. Tax Benefit Payments under this Agreement are not conditioned on any TRA Party retaining an interest in the Corporate Taxpayer or OpCo (or any successor thereto).

(b) The Corporate Taxpayer may terminate this Agreement with respect to all amounts payable to the TRA Parties and with respect to all of the Common Units held (or previously held and Exchanged) by all TRA Parties at any time by paying to each TRA Party the Early Termination Payment in respect of such TRA Party; provided, however, that this Agreement shall only terminate pursuant to this Section 4.01(b) upon the receipt of the Early Termination Payment by all TRA Parties; and provided, further, that the Corporate Taxpayer may withdraw any notice to exercise its termination rights under this Section 4.01(b) prior to the time at which any Early Termination Payment has been paid. Upon payment of the Early Termination Payment by the Corporate Taxpayer in accordance with this Section 4.01(b), neither the TRA Parties nor the Corporate Taxpayer shall have any further payment obligations under

this Agreement, other than for any (1) Tax Benefit Payment agreed to by the Corporate Taxpayer and a TRA Party as due and payable but unpaid as of the Early Termination Notice and (2) Tax Benefit Payment due for the Taxable Year ending with or including the date of the Early Termination Notice (except to the extent that the amount described in clause (2) is included in the Early Termination Payment). If an Exchange occurs after the Corporate Taxpayer makes the Early Termination Payment pursuant to this Section 4.01(b), the Corporate Taxpayer shall have no obligations under this Agreement with respect to such Exchange.

(c) In the event that the Corporate Taxpayer breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, then all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach and shall include, but not be limited to, (1) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of a breach, (2) any Tax Benefit Payment agreed to by the Corporate Taxpayer and any of the TRA Parties as due and payable but unpaid as of the date of a breach, and (3) any Tax Benefit Payment due for the Taxable Year ending with or including the date of a breach; provided that procedures similar to the procedures of Section 4.02 shall apply with respect to the determination of the amount payable by the Corporate Taxpayer pursuant to this sentence. Notwithstanding the foregoing, in the event that the Corporate Taxpayer breaches this Agreement, each TRA Party shall be entitled to elect to receive the amounts set forth in clauses (1), (2) and (3) above or to seek specific performance of the terms hereof. The parties agree that the failure to make any payment due pursuant to this Agreement within three] months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it will not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three months of the date such payment is due. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Agreement if the Corporate Taxpayer fails to make any payment due pursuant to this Agreement when due to the extent the Corporate Taxpayer has insufficient funds to make such payment despite using reasonable best efforts to obtain funds to make such payment (including by causing OpCo or any other Subsidiaries to distribute or lend funds for such payment); provided that the interest provisions of Section 5.02 shall apply to such late payment (unless the Corporate Taxpayer does not have sufficient cash to make such payment as a result of limitations imposed by debt agreements to which the Corporate Taxpayer or any of its Subsidiaries is a party, in which case Section 5.02 shall apply, but the Default Rate shall be replaced by the Agreed Rate); provided, further, that the Corporate Taxpayer shall promptly (and in any event, within three (3) Business Days), pay all such unpaid payments, together with accrued and unpaid interest thereon, immediately following such time that the Corporate Taxpayer has, and to the extent the Corporate Taxpayer has, sufficient funds to make such payment, and the failure of the Corporate Taxpayer to do so shall constitute a breach of this Agreement. For the avoidance of doubt, all cash and cash equivalents used or to be used to pay dividends by, or repurchase equity securities of, the Corporate Taxpayer shall be deemed to be funds sufficient and available to pay such unpaid payments, together with any accrued and unpaid interest thereon.

Section 4.02 Early Termination Notice. If the Corporate Taxpayer chooses to exercise its right of early termination under Section 4.01(b) above, the Corporate Taxpayer shall deliver to each TRA Party notice of such intention to exercise such right ("Early Termination Notice") and a schedule (the "Early Termination Schedule") specifying the Corporate Taxpayer's intention to exercise such right and showing in reasonable detail the calculation of the Early Termination Payment for such TRA Party. The Early Termination Schedule shall become final and binding on such TRA Party thirty (30) calendar days from the first date on which such TRA Party has received such Schedule or amendment thereto unless such TRA Party (i) within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporate Taxpayer with notice of a material objection to such Schedule made in good faith ("Material Objection Notice") or (ii) provides a written waiver of such right of a Material Objection Notice within the period described in clause (i) above, in which case such Schedule becomes binding on the date the waiver is received by the Corporate Taxpayer (such thirty (30) calendar day date as modified, if at all, by clauses (i) or (ii), the "Early Termination Effective Date"). If the Corporate Taxpayer and such TRA Party, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of the Material Objection Notice, the Corporate Taxpayer and such TRA Party shall employ the Reconciliation Procedures.

Section 4.03 Payment upon Early Termination.

(a) Within three (3) Business Days after the Early Termination Effective Date, the Corporate Taxpayer shall pay to each TRA Party an amount equal to the Early Termination Payment in respect of such TRA Party. Such payment shall be made by wire transfer of immediately available funds to a bank account or accounts designated by such TRA Party or as otherwise agreed by the Corporate Taxpayer and such TRA Party.

(b) "Early Termination Payment" in respect of a TRA Party shall equal the present value, discounted at the Early Termination Rate as of the Early Termination Effective Date, of all Tax Benefit Payments in respect of such TRA Party that would be required to be paid by the Corporate Taxpayer beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied.

ARTICLE V
SUBORDINATION AND LATE PAYMENTS

Section 5.01 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment or Early Termination Payment required to be made by the Corporate Taxpayer to any TRA Party under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of the Corporate Taxpayer and its Subsidiaries ("Senior Obligations") and shall rank pari passu with all current or future unsecured obligations of the Corporate Taxpayer that are not Senior Obligations.

Section 5.02 Late Payments by the Corporate Taxpayer. The amount of all or any portion of any Tax Benefit Payment or Early Termination Payment not made to the applicable TRA Party when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate and commencing from the date on which such Tax Benefit Payment or Early Termination Payment was due and payable, subject to Section 4.01(c).

ARTICLE VI
NO DISPUTES; CONSISTENCY; COOPERATION

Section 6.01 Participation in the Corporate Taxpayer's and OpCo's Tax Matters. Except as otherwise provided herein, the Corporate Taxpayer shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporate Taxpayer and OpCo, including the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, the Corporate Taxpayer shall notify a TRA Party of, and keep such TRA Party reasonably informed with respect to, the portion of any audit of the Corporate Taxpayer and OpCo by a Taxing Authority the outcome of which is reasonably expected to affect the rights and obligations of such TRA Party under this Agreement, and shall provide to such TRA Party reasonable opportunity to provide information and other input (at such TRA Party's own expense) to the Corporate Taxpayer, OpCo and their respective advisors concerning the conduct of (but, for the avoidance of doubt such TRA Party may not control) any such portion of such audit; provided, however, that the Corporate Taxpayer and OpCo shall not be required to take any action that is inconsistent with any provision of the LLC Agreement.

Section 6.02 Consistency. The Corporate Taxpayer and the TRA Parties agree to report and cause to be reported for all purposes, including federal, state and local Tax purposes and financial reporting purposes, all Tax-related items (including the Tax Attributes and each Tax Benefit Payment) in a manner consistent with that specified by the Corporate Taxpayer in any Schedule required to be provided by or on behalf of the Corporate Taxpayer under this Agreement unless otherwise required by law. Any dispute as to required Tax or financial reporting shall be subject to Section 7.09.

Section 6.03 Cooperation. Each of the Corporate Taxpayer and each TRA Party shall (a) furnish to the other party in a timely manner such information, documents and other materials as the other party may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (b) make itself available to the other party and its representatives to provide explanations of documents and materials and such other information as the other party or its representatives may reasonably request in connection with any of the matters described in clause (a) above, and (c) reasonably cooperate in connection with any such matter, and the Corporate Taxpayer shall reimburse the applicable TRA Party for any reasonable third-party costs and expenses incurred pursuant to this Section 6.03.

ARTICLE VII
MISCELLANEOUS

Section 7.01 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail ("e-mail") transmission, so long as a receipt of such e-mail is requested and received) and shall be given to such party as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporate Taxpayer, to:

[ ]

With copies (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Attention: Alan Denenberg
Michael Mollerus
E-mail: alan.denenberg@davispolk.com
michael.mollerus@davispolk.com

If to the applicable TRA Party, to the address, facsimile number or e-mail address specified for such party on the Member Schedule to the LLC Agreement or the Notice provision of the relevant agreement governing the Merger.

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 7.02 Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns. The Corporate Taxpayer shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporate Taxpayer, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporate Taxpayer would be required to perform if no such succession had taken place.

(b) A TRA Party may assign any of its rights under this Agreement to any Person as long as such transferee has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, in form of Exhibit A, agreeing to become a "TRA Party" for all purposes of this Agreement, except as otherwise provided in such joinder; provided, that a TRA Party's rights under this Agreement shall be assignable by such TRA Party under the procedure in this Section 7.02(b) regardless of whether such TRA Party continues to hold any interests in OpCo or the Corporate Taxpayer or has fully transferred any such interests.

(c) OpCo shall have the power and authority (but not the obligation) to permit any Person who becomes a member of OpCo to execute and deliver a joinder to this Agreement promptly upon acquisition of Common Units by such Person, and such Person shall be treated as a "TRA Party" for all purposes of this Agreement.

Section 7.03 Resolution of Disputes.

(a) Except for Reconciliation Disputes subject to Section 7.09, any and all disputes which cannot be settled amicably, including any ancillary claims of any party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this arbitration provision) (each a "Dispute") shall be finally settled by arbitration conducted by a single arbitrator in Delaware in accordance with the then-existing Rules of Arbitration of the International Chamber of Commerce. If the parties to the Dispute fail to agree on the selection of an arbitrator within ten (10) days of the receipt of the request for arbitration, the International Chamber of Commerce shall make the appointment. The arbitrator shall be a lawyer admitted to the practice of law in the State of Delaware and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings.

(b) Notwithstanding the provisions of paragraph (a), the Corporate Taxpayer may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this paragraph (b), each TRA Party (i) expressly consents to the application of paragraph (c) of this Section 7.03 to any such action or proceeding, (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate, and (iii) irrevocably appoints the Corporate Taxpayer as agent of such TRA Party for service of process in connection with any such action or proceeding and agrees that service of process upon such agent, who shall promptly advise such TRA Party of any such service of process, shall be deemed in every respect effective service of process upon such TRA Party in any such action or proceeding.

(c) EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE CHANCERY COURT OF THE STATE OF DELAWARE OR, IF SUCH COURT DECLINES JURISDICTION, THE COURTS OF THE STATE OF DELAWARE SITTING IN WILMINGTON, DELAWARE, AND OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE SITTING IN WILMINGTON, DELAWARE, AND ANY APPELLATE COURT FROM ANY THEREOF, FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE

PROVISIONS OF THIS SECTION 7.03, OR ANY JUDICIAL PROCEEDING ANCILLARY TO AN ARBITRATION OR CONTEMPLATED ARBITRATION ARISING OUT OF OR RELATING TO OR CONCERNING THIS AGREEMENT. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration, or to confirm an arbitration award. The parties acknowledge that the fora designated by this paragraph (c) have a reasonable relation to this Agreement, and to the parties' relationship with one another.

(d) The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in the preceding paragraph of this Section 7.03 and such parties agree not to plead or claim the same.

Section 7.04 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 7.05 Entire Agreement. This Agreement and the other [Reorganization Documents] (as such term is defined in the LLC Agreement) constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party hereto.

Section 7.06 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 7.07 Amendment. No provision of this Agreement may be amended unless such amendment is approved in writing by the Corporate Taxpayer and by Persons who would be entitled to receive at least two-thirds of the Early Termination Payments payable to all Persons entitled to Early Termination Payments under this Agreement if the Corporate Taxpayer had exercised its right of early termination on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any Persons pursuant to this Agreement since the date of such most recent Exchange); provided, that no such amendment shall be effective if such amendment will have a disproportionate effect on the payments certain Persons will or may receive under the Tax Receivable Agreements unless all such Persons disproportionately affected consent in writing to such amendment. No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

Section 7.08 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.

Section 7.09 Reconciliation. In the event that the Corporate Taxpayer and a TRA Party are unable to resolve a disagreement with respect to the matters governed by Sections 2.03, 3.01(b), 4.02 and 6.02 within the relevant period designated in this Agreement ("Reconciliation Dispute"), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the "Expert") in the particular area of disagreement mutually acceptable to both parties. The Expert shall be a partner or principal in a nationally recognized accounting or law firm, and unless the Corporate Taxpayer and such TRA Party agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporate Taxpayer or such TRA Party or other actual or potential conflict of interest. If the parties are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise. The Expert shall resolve any matter relating to the Attribute Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporate Taxpayer, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporate Taxpayer, except as provided in the next sentence. The Corporate Taxpayer and such TRA Party shall bear their own costs and expenses of such proceeding, unless (i) the Expert substantially adopts such TRA Party's position, in which case the Corporate Taxpayer shall reimburse such TRA Party for any reasonable out-of-pocket costs and expenses in such proceeding, or (ii) the Expert substantially adopts the Corporate Taxpayer's position, in which case such TRA Party shall reimburse the Corporate Taxpayer for any reasonable out-of-pocket costs and expenses in such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.09 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.09 shall be binding on the Corporate Taxpayer and such TRA Party and may be entered and enforced in any court having jurisdiction.

Section 7.10 Withholding. The Corporate Taxpayer shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporate Taxpayer is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporate

Taxpayer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the TRA Party in respect of whom such withholding was made. To the extent that any payment to a TRA Party pursuant to this Agreement is not reduced by such deductions or withholdings, such TRA Party shall indemnify the applicable withholding agent for any amounts imposed by any Taxing Authority together with any costs and expenses related thereto. Each TRA Party shall promptly provide the Corporate Taxpayer, OpCo or other applicable withholding agent with any applicable Tax forms and certifications (including IRS Form W-9 or the applicable version of IRS FormW-8) reasonably requested, in connection with determining whether any such deductions and withholdings are required under the Code or any provision of United States state, local or non-U.S. tax law.

Section 7.11 Admission of the Corporate Taxpayer into a Consolidated Group; Transfers of Corporate Assets

(a) If the Corporate Taxpayer is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income tax return pursuant to Sections 1501 et seq. of the Code or any corresponding provisions of state or local law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers one or more assets to a corporation (or a Person classified as a corporation for U.S. federal income tax purposes) with which such entity does not file a consolidated tax return pursuant to Section 1501 of the Code, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment (e.g., calculating the gross income of the entity and determining the Realized Tax Benefit of such entity) due hereunder, shall be treated as having disposed of such asset in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by such entity shall be equal to the fair market value of the contributed asset. For purposes of this Section 7.11, a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership.

Section 7.12 Confidentiality. Section 12.11 (Confidentiality) of the LLC Agreement as of the date of this Agreement shall apply to any information of the Corporate Taxpayer provided to the TRA Parties and their assignees pursuant to this Agreement.

Section 7.13 Change in Law. Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a TRA Party reasonably believes that the existence of this Agreement could cause income (other than income arising from receipt of a payment under this Agreement) recognized by such TRA Party (or direct or indirect equity holders in such TRA Party) upon an Exchange to be treated as ordinary income rather than capital gain (or otherwise taxed at ordinary income rates) for U.S. federal income tax purposes or would have other material adverse tax consequences to the Corporate Taxpayer or such TRA Party or any direct or indirect owner of a TRA Party, then at the election of such TRA Party and to the extent specified by such TRA Party, this Agreement (i) shall cease to have further effect with respect to such TRA Party, (ii) shall not apply to an Exchange occurring after a date

specified by such TRA Party, or (iii) shall otherwise be amended in a manner determined by such TRA Party; provided, that such amendment shall not result in an increase in payments under this Agreement to such TRA Party at any time as compared to the amounts and times of payments that would have been due to such TRA Party in the absence of such amendment.

Section 7.14 Partnership Agreement. This Agreement, to the extent it relates to holders of Common Units, shall be treated as part of the partnership agreement of OpCo as described in Section 761(c) of the Code, and Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporate Taxpayer, OpCo, and each TRA Party set forth below have duly executed this Agreement as of the date first written above.

CORPORATE TAXPAYER:

XPONENTIAL FITNESS, INC.

By: _____
Name:
Title:

OPCO:

XPONENTIAL INTERMEDIATE HOLDINGS, LLC

By: _____
Name:
Title:

TRA PARTIES:

By: _____
Name:
Title:

Exhibit A
Joinder

This JOINDER (this "Joinder") to the Tax Receivable Agreement (as defined below), dated as of _____, by and among Xponential Fitness, Inc., a Delaware corporation (the "Corporate Taxpayer"), _____ ("Transferor") and _____ ("Permitted Transferee").

WHEREAS, on _____, Permitted Transferee acquired from Transferor (the "Acquisition") the right to receive any and all payments that may become due and payable under the Tax Receivable Agreement with respect to (i) _____ Common Units that were previously, or may in the future be, Exchanged or (ii) _____ % of Transferor's entitlement to receive Tax Benefit Payments in respect of the Blocker Company; and

WHEREAS, Transferor, in connection with the Acquisition, has required Permitted Transferee to execute and deliver this Joinder pursuant to Section 7.02(b) of the Tax Receivable Agreement, dated as of [ ], 2021, by and among the Corporate Taxpayer and each TRA Party (the "Tax Receivable Agreement").

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

Section 1.01 Definitions. To the extent capitalized words used in this Joinder are not defined in this Joinder, such words shall have the respective meanings set forth in the Tax Receivable Agreement.

Section 1.02 Joinder. Permitted Transferee hereby acknowledges and agrees to become a "TRA Party" (as defined in the Tax Receivable Agreement) for all purposes of the Tax Receivable Agreement. Permitted Transferee hereby acknowledges the terms of Section 7.02(b) of the Tax Receivable Agreement and agrees to be bound by Section 7.12 of the Tax Receivable Agreement.

Section 1.03 Notice. Any notice, request, consent, claim, demand, approval, waiver or other communication hereunder to Permitted Transferee shall be delivered or sent to Permitted Transferee at the address set forth on the signature page hereto in accordance with Section 7.01 of the Tax Receivable Agreement.

Section 1.04 Governing Law. This Joinder shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.

IN WITNESS WHEREOF, this Joinder has been duly executed and delivered by Permitted Transferee as of the date first above written.

[PERMITTED TRANSFEREE]

By: _____
Name:
Title:

Address for notices:

SECURITIES PURCHASE AGREEMENT

BY AND AMONG

THE PURCHASERS LISTED ON EXHIBIT A HERETO

AND

XPONENTIAL FITNESS, INC.

DATED AS OF JUNE 25, 2021

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Exhibits

Schedules

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (this "Agreement"), dated as of June 25, 2021, is made by and among (a) the Purchasers named in Exhibit A hereto (collectively, the "Purchasers") and (b) Xponential Fitness, Inc., a Delaware corporation (the "Company" and, together with the Purchasers and any Affiliate of any Purchaser that becomes a party to this Agreement, the "Parties").

WHEREAS, the Company desires to issue and sell to the Purchasers an aggregate of 200,000 shares of 6.50% SeriesA-1 Convertible Preferred Stock of the Company (the "Preferred Shares"), concurrently with the completion of a Qualified IPO (as defined herein) on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, at the Closing, each Purchaser desires to purchase the number of Preferred Shares set forth opposite such Purchaser's name on Exhibit A under the heading "Purchased Shares" on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I
SALE AND PURCHASE OF SECURITIES

Section 1.1 Sale and Purchase of Preferred Shares. Subject to the terms and conditions of this Agreement, at the Closing (i) the Company will issue and sell to each Purchaser the number of Preferred Shares set forth on Exhibit A hereto opposite such Purchaser's name under the heading "Purchased Shares" (the "Purchased Shares"), free and clear of all Liens, in exchange for $1,000 per share, and (ii) each Purchaser will, severally, and not jointly, purchase the applicable Purchased Shares and pay such Purchaser's Purchase Price by wire transfer of immediately available funds to an account designated in writing by the Company. The obligations of the Purchasers to purchase the Preferred Shares hereunder are several, and not joint, and no Purchaser will have any Liability to any Person for the performance or non-performance by any other Purchaser in connection therewith.

Section 1.2 Closing. The consummation of each sale and purchase of Preferred Shares in accordance with the terms of this Agreement (the "Closing") will take place at the offices of Latham & Watkins LLP 1271 Avenue of the Americas, New York, NY 10019 immediately prior to, and conditioned upon, the closing of the Qualified IPO (the date of such Closing, the "Closing Date"); provided that if the Company consummates a firm commitment underwritten public offering that is not a Qualified IPO (a "Non-Qualified IPO"), the Purchasers may, in their respective sole discretion, waive the Qualified IPO condition set forth in Section 4.1(e) and if such waiver is granted, the Closing and the Closing Date shall occur immediately prior to, and conditioned up, the closing of such Non-Qualified IPO (and such date shall be deemed to be the Closing Date).

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Company Disclosure Letter, the Company represents and warrants to the Purchasers that:

Section 2.1 Organization, Good Standing, Etc. Each Company Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization, (b) has all requisite power and authority to conduct its business as now conducted, and (c)is duly qualified to do business, and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except, with respect to this clause (c), where a failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

Section 2.2 Authorization, Etc. The execution, delivery and performance by the Company of the Preferred Documents (a) have been duly authorized by all necessary action, (b) do not and will not contravene (i) any of its Organizational Documents, (ii) any applicable Law or (iii) any applicable Contractual Obligation binding on or otherwise affecting it or any of its properties, (c) do not and will not result in or require the creation of any Lien upon or with respect to any of its properties other than any such Lien that constitutes a Permitted Lien and (d) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operation or any of its properties, except in the cause of clauses (b)(ii)-(iii) and (d), as would not reasonably be expected to have a Material Adverse Effect.

Section 2.3 Governmental and Shareholder Approvals. No authorization or approval or other action by, and no notice to or filing with any Governmental Authority is required in connection with the due execution, delivery and performance by the Company of any Preferred Document or the consummation of the transactions contemplated by the Preferred Documents, except for (a) those which have been or will be provided or obtained on or prior to the Closing Date and (b) those notices of filings with any Governmental Authority, which if not obtained or made would not, individually or in the aggregate, reasonably be expected to be material and adverse to the Company Group Members, taken as a whole.

Section 2.4 Enforceability of Preferred Documents. This Agreement is, and each other Preferred Document, when delivered hereunder, will be, a legal valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affective the enforcement of creditors' rights generally and general principles of equity.

Section 2.5 Capitalization; Subsidiaries.

(a) On the date hereof, all of the Company's capital stock is owned of record and beneficially by H&W Franchise Holdings LLC ('H&W"). On the date hereof, H&W conducts its business through Xponential Fitness LLC and its subsidiaries. Xponential Fitness LLC is a wholly owned subsidiary of Xponential Intermediate Holdings LLC. Following a Qualified IPO, the Company will be a holding company and its sole material asset will be a controlling ownership interest in Xponential Fitness LLC through its ownership interest in Xponential Intermediate Holdings LLC.

(b) On the date hereof, the authorized capital stock of H&W is as set forth in the Sixth Amended and Restated Limited Liability Company Operating Agreement of H&W, dated August 31, 2020 (as amended by Amendment No. One thereto dated March 24, 2021), in each case as provided to Purchasers prior to the date hereof. On the Closing Date, other than the Preferred Shares, the Company will have no other shares of preferred stock issued or outstanding.

(c) Subject to the accuracy of the representations and warranties of the Purchasers set forth in this Agreement, the Purchasers' compliance with their respective covenants set forth in this Agreement, and any matters arising from actions taken by or on behalf of any of the Purchasers or their Affiliates, as of the Closing Date, the applicable Preferred Shares will (i) be duly authorized by all necessary corporate action on the part of the Company and validly issued, (ii) be issued in compliance with all applicable federal and state securities Laws, (iii) not be subject to any preemptive or similar right, purchase or call option or right of first refusal or similar right, and (iv) be free and clear of all Liens.

(d) Except as indicated on Schedule 2.5 of the Company Disclosure Letter, all equity securities of each Subsidiary of any Company Group Member are owned by a Company Group Member, free and clear of all Liens other than Permitted Liens. Except as set forth on Schedule 2.5 of the Company Disclosure Letter, there are no outstanding debt securities of any Subsidiaries of a Company Group Member and no outstanding obligations of the Subsidiaries of a Company Group Member convertible into or exchangeable for, or warrants, options or other rights (other than stock options granted to employees or directors and director's qualifying shares or similar nominal share to the extent required under applicable legal requirements) for the purchase or acquisition from the any of such Subsidiaries, or other obligations of any such Subsidiary to issue, directly or indirectly, any shares of equity securities of any such Subsidiary.

Section 2.6 Litigation; Commercial Tort Claims. Except as set forth on Schedule 2.6 of the Company Disclosure Letter, (a) there is no pending or, to the knowledge of the Company, threatened (in writing) action, suit or proceeding affecting the Company or any of its Subsidiaries or any of its properties before any court or other Governmental Authority or any arbitrator that (i) could reasonably be expected to result in an adverse determination, and if so adversely determined, could reasonably be expected to have a Material Adverse Effect or (ii) seeks to enjoin any transaction contemplated hereby or by any Preferred Document and (b) none of the Company nor any of its Subsidiaries holds any commercial tort claims in respect of which a claim in excess of $500,000 has been filed in a court of law or a written notice by an attorney has been given to a potential defendant.

Section 2.7 Financial Condition. The Financial Statements, copies of which have been delivered to each Purchaser, present fairly, in all material respects, the consolidated financial position, results of operations and cash flows of the Company Group Members for the respective periods or as of the respective dates set forth therein in accordance with GAAP, applied on a consistent basis during the periods presented, except as otherwise noted therein (subject, in the case of the unaudited consolidated balance sheet and the related consolidated statements of operations, comprehensive income, shareholders' equity and cash flows, to normal, recurring year-end adjustments and the absence of footnotes). Since March 31, 2021, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

Section 2.8 Compliance with Law, Etc. The Company Group Members are not in violation of (i) any of their Organizational Documents or (ii) any domestic or, to the best of its knowledge, any foreign Law to the extent that any such violation could reasonably be expected to result in a Material Adverse Effect, and no material default or event of default has occurred and is continuing thereunder.

Section 2.9 ERISA. Except as set forth on Schedule 2.9 of the Company Disclosure Letter and except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (a) each Plan is in compliance with ERISA and the Internal Revenue Code, and all other applicable laws and regulations (b) no ERISA Event has occurred or, to the knowledge of the Company, is reasonably expected to occur, (c) the most recent annual report (Form 5500 Series) with respect to each Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service, is complete and correct in all material respects and fairly presents the funding status of such Plan, and since the date of such report there has been no material adverse change in such funding status of such Plan, and (d) no Plan had an accumulated or waived funding deficiency. No Lien imposed under the Internal Revenue Code or ERISA exists or, to the knowledge of the Company, is likely to arise on account of any Plan. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) the Company and its ERISA Affiliates have not incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability, (ii) the Company has not engaged in a nonexempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code and (iii) the Company and its ERISA Affiliate have not (1) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (2) engaged in a transaction within the meaning of Section 4069 of ERISA or (3) incurred any liability to the PBGC that remains outstanding other than the payment of premiums, and there are no premium payments that have become due that are unpaid. Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, there are no pending or, to the best knowledge of the Company, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (x) any Plan or its assets or (y) the Company with respect to any Plan. Except as required by Section 4980B of the Internal Revenue Code, the Company does not maintain an employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Company or coverage after a participant's termination of employment, except any such plans for which the Company does not incur any material costs or expenses.

Section 2.10 Taxes, Etc. All federal and material state and local income and other material tax returns required by applicable Law to be filed by the Company Group Members have been filed, or extensions have been obtained, and such tax returns were accurate and complete in all material respects. All material taxes, assessments and other governmental charges imposed upon the Company Group Members or any property of the Company Group Members which have

become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings and with respect to which adequate reserves have been set aside in accordance with GAAP. Each of the Operating LLC and its material Subsidiaries has been properly classified as a partnership or disregarded entity since its formation for U.S. federal and applicable state and local income tax purposes.

Section 2.11 Nature of Business. No Company Group Member is engaged in any business other than as set forth on Schedule 2.11 of the Company Disclosure Letter.

Section 2.12 Permits, Etc. The Company Group Members have, and are in compliance with all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except as could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect, except as could not reasonably be expected to have a Material Adverse Effect.

Section 2.13 Properties.

(a) Each Company Group Member has good and marketable title to, valid leasehold interests in (other than the Leases), or valid licenses to use, all tangible property and assets material to its business, free and clear of all Liens, except Permitted Liens and, solely as to leasehold interests (other than the Leases), except to the extent the failure to have such valid leasehold interests could not reasonably be expected to have a Material Adverse Effect. All such properties and assets are in good working order and condition, ordinary wear and tear and casualty (to the extent fully covered by insurance subject to a deductible) and condemnation excepted.

(b) Schedule 2.13 of the Company Disclosure Letter sets forth a complete and accurate list of the location, by state and street address, of all real property owned or leased by the Company and each of its Subsidiaries and identifies the interest (fee or leasehold) of such Person therein and whether such real property is a "Facility". the Company and each of its Subsidiaries has valid leasehold interests in the Leases described on Schedule 2.13 of the Company Disclosure Letter to which it is a party, except to the extent the failure to have such valid leasehold interests could not reasonably be expected to have a Material Adverse Effect. Each such Lease is (x) valid and enforceable in accordance with its terms in all material respects and is in full force and effect (except to the extent such Lease has terminated in accordance with its terms), except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and (y) no consent or approval of any landlord or other third party in connection with any such Lease is necessary for the Company to enter into and execute the Preferred Documents, except as set forth on Schedule 2.13 of the Company Disclosure Letter. To the knowledge of the Company, none of the Company nor any of its Subsidiaries have at any time delivered or received any notice of material default which remains uncured under any such Lease and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a material default under any such Lease, except to the extent such event could not reasonably be expected to result in a Material Adverse Effect.

Section 2.14 Full Disclosure. The Company has disclosed to the Purchasers all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that could reasonably be expected to result in a Material Adverse Effect. None of the other reports, financial statements, certificates or other written information furnished by or on behalf of the Company to the Purchasers in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), as of the date prepared, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading.

Section 2.15 Franchise Agreements.

(a) Schedule 2.15 of the Company Disclosure Letter sets forth, as of December 31, 2020, (i) a complete and accurate list of all material Franchise Agreements currently in effect, (ii) a complete and accurate list of each Company Group Member's (or their predecessor franchisor's) standard forms of Franchise Agreements currently in effect, including the year or years during which the applicable Company Group Member (or its predecessor) used such form of Franchise Agreement for the 6 months prior to the Effective Date, and (iii) a list of all material Franchisees of the Company Group Members currently operating under a Franchise Agreement, together with telephone numbers and addresses.

(b) Except as set forth on Schedule 2.15 of the Company Disclosure Letter, each material Franchise Agreement is in full force and effect and constitutes a valid and binding obligation of the Company or the relevant Subsidiary of the Company, as applicable, and, to the knowledge of the Company, the other party thereto, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws. The Company Group Members are not in material breach or default thereunder, and, to the knowledge of the Company, no event has occurred and no condition or state of facts exists which, with the passage of time or the giving of notice or both, would constitute such a default or breach by the Company or the applicable Company Subsidiary thereunder. Except as set forth on Schedule 2.15 of the Company Disclosure Letter, there is no term, obligation, understanding or agreement that would modify any material term of a material Franchise Agreement or any right or obligation of a party thereunder which is not reflected on the face of such Franchise Agreement (including, without limitation, any offers or promises with respect to any future or contingent subsidies, rebates, advances or allowances to or for the benefit of any or all Franchisees).

(c) The Company's and its Subsidiaries' franchise disclosure documents and/or franchise disclosure documents previously in effect and, to the extent applicable, currently in effect, if any: (i) materially comply and have materially complied with all applicable United States Federal Trade Commission franchise disclosure rules and state franchise and business opportunity sales laws in effect at such time; (ii) have been timely amended to reflect any material changes or developments in the Company's and its Subsidiaries' franchise system, agreements, operations, financial condition, litigation matters, or other matters requiring disclosure under any applicable law; and (iii) include all material documents (including audited financial statements for the

applicable Person) required by any applicable law to be provided to prospective franchisees. All of the Franchises granted under the Franchise Agreements have been sold in material compliance with applicable law, including franchise disclosure and registration requirements. The Company Group Members are and have been in material compliance with all applicable laws relating to franchise matters.

(d) A list of each Company Group Member's material franchise disclosure documents for its currently offered form or forms of Franchise Agreement is set forth on Schedule 2.15 of the Company Disclosure Letter. The Company has provided the Purchasers with true and complete copies of each material franchise disclosure document for its currently offered form or forms of Franchise Agreement set forth on Schedule 2.15 of the Company Disclosure Letter. Except as set forth on Schedule 2.15 of the Company Disclosure Letter, the Company Group Members have not received any currently effective written notice of any threatened administrative, criminal or civil action against it or any persons disclosed in any of Company Group Member's applicable franchise disclosure documents for its Franchise Agreements, where such threatened administrative, criminal and/or civil action alleges a violation of a franchise law, antitrust law, securities law, fraud, unfair or deceptive practices, or comparable allegations, as well as actions other than ordinary routine litigation incidental to the Company Group Members' business that are material in the context of the number of their Franchisees and the size, nature, or financial condition of the franchise system or the Company Group Members' business operations.

(e) Except as set forth on Schedule 2.15 of the Company Disclosure Letter, each Company Group Member has maintained an accurate accounting in all material respects with respect to any advertising funds required to be paid by an Franchisee or an advertising fund for use in connection with national or regional advertising for which it maintains accounts. All collections with respect to such advertising funds and advertising cooperatives have been collected in accordance with the terms and conditions of each Franchise Agreement, except to the extent where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Company Group Members have properly accounted for all payments made by each Franchisee with respect to any advertising fund or advertising cooperative, except to the extent where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. No Company Group Member is aware of any allegations that any of the expenditures from any advertising fund or advertising cooperative have been improperly collected, accounted for, maintained, used or applied that could reasonably be expected to result in a Material Adverse Effect.

Section 2.16 Environmental Matters. Except as set forth on Schedule 2.16 of the Company Disclosure Letter, (a) the operations of the Company Group Members are in compliance with all Environmental Laws in all material respects; (b) there has been no Release at any of the properties owned or operated by the Company or any of its Subsidiaries or a predecessor in interest, or, to the knowledge of the Company, at any disposal or treatment facility which received Hazardous Materials generated by the Company or any of its Subsidiaries or any predecessor in interest which in either case could reasonably be expected to have a Material Adverse Effect; (c) no Environmental Action has been asserted against the Company or any of its Subsidiaries or any predecessor in interest nor does the Company have knowledge or notice of any threatened or pending Environmental Action against the Company or any of its Subsidiaries or any predecessor in interest which in either case could reasonably be expected to have a Material Adverse Effect;

(d) to the knowledge of the Company, no Environmental Actions have been asserted against any facilities that may have received Hazardous Materials generated by the Company or any of its Subsidiaries or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (e) the Company Group Members have not failed to report to the proper Governmental Authority any Release which is required to be so reported by any Environmental Laws which could reasonably be expected to have a Material Adverse Effect; (f) the Company and each of its Subsidiaries holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of the business carried on by it, except for such licenses, permits and approvals as to which the Company's or its Subsidiaries' failure to maintain or comply with could not reasonably be expected to have a Material Adverse Effect; and (g) the Company Group Members have not received any notification from any Governmental Authority pursuant to any Environmental Laws that (i) any work, repairs, construction or capital expenditures are required to be made in respect as a condition of continued compliance with any Environmental Laws, or any license, permit or approval issued pursuant thereto or (ii) any license, permit or approval referred to above is about to be reviewed, made subject to limitations or conditions, revoked, withdrawn or terminated, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

Section 2.17 Insurance. Each Company Group Member keeps its property adequately insured and maintains (a) insurance to such extent and against such risks, including fire, as is customary with companies in the same or similar businesses, (b) workmen's compensation insurance in the amount required by applicable law, (c) public liability insurance in the amount customary with companies in the same or similar businesses against claims for personal injury or death on properties owned, occupied or controlled by it, and (d) such other insurance as may be required by law. Schedule 2.17 of the Company Disclosure Letter sets forth a list of all insurance maintained by each Company Group Member as of the date hereof.

Section 2.18 Reserved.

Section 2.19 Intellectual Property. Except as set forth on Schedule 2.18 of the Company Disclosure Letter, the Company and each of its Subsidiaries owns or licenses or otherwise has the right to use all intellectual property that are necessary for and material to the conduct of its business as currently conducted, including the following: inventions, patents, patent applications, registered and unregistered trademarks, service marks and trade names, registered and unregistered copyrights, including software and other works of authorship, trade secrets and other intellectual property rights. To the knowledge of the Company, none of the Company nor any of its Subsidiaries infringes upon or violates any intellectual property rights owned by any other Person except if the Company and its Subsidiaries could not, as a result of such infringement or violation, reasonably be expected to suffer a Material Adverse Effect, and no claim or litigation is pending or, to the knowledge of the Company, threatened in writing concerning any claim or allegation that the Company or any of its Subsidiaries has infringed upon or violated any intellectual property rights owned by any other Person, except for such claims and litigation, which could not reasonably be expected to have a Material Adverse Effect.

Section 2.20 Material Contracts. Set forth on Schedule 2.19 of the Company Disclosure Letter is a complete and accurate list as of the date hereof of all Material Contracts of each Company Group Member, showing the parties and subject matter thereof and amendments and modifications thereto. Each such Material Contract is (a) in full force and effect and is binding upon and enforceable against each Company Group Member that is a party thereto and (b) is not in default due to the action of any Company Group Member or, to the knowledge of any Company Group Member, any other party thereto, except to the extent that any such default could not reasonably be expected to result in a Material Adverse Effect.

Section 2.21 Investment Company Act. No Company Group Member is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 2.22 Employee and Labor Matters. There is (a) no unfair labor practice complaint pending or, to the knowledge of any the Company, threatened (in writing) against any Company Group Member before any Governmental Authority and no grievance or arbitration proceeding pending or threatened (in writing) against any Company Group Member that arises out of or under any collective bargaining agreement, in each case that could reasonably be expected to result in a Material Adverse Effect or (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or, to the knowledge of the Company, threatened (in writing) against any Company Group Member that could reasonably be expected to result in a Material Adverse Effect. No Company Group Member has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law that remains unpaid or unsatisfied. The hours worked and payments made to employees of any Company Group Member have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent that such violations could not reasonably be expected to result in a Material Adverse Effect. All material payments due from any Company Group Member on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Person, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 2.23 Customers and Suppliers. There exists no actual or, to the knowledge of the Company, threatened (in writing) termination, cancellation or limitation of, or modification to or change in, the business relationship between (a) any Company Group Member, on the one hand, and any customer or any group thereof, on the other hand, or (b) any Company Group Member, on the one hand, and any supplier or any group thereof, on the other hand, in either case with respect to clauses (a) and (b), which could reasonably be expected to have a Material Adverse Effect.

Section 2.24 Anti-Money Laundering and Anti-Terrorism Laws.

(a) The Company Group Members, and to the best knowledge of the Company, any Affiliates of any of the Company Group Members, are and for the past six years have been in compliance in all material respects with Anti-Money Laundering and Anti-Terrorism Laws.

(b) None of the Company Group Members, nor, to the best knowledge of the Company, any controlled Affiliate of any of the Company Group Members, nor any officer or director of any of the Company Group Members, nor any of the Company Group Members' respective agents acting or benefiting in any capacity in connection with the transactions hereunder, is a Sanctioned Person.

Section 2.25 Anti-Bribery and Anti-Corruption Laws.

(a) The Company Group Members, and their Affiliates, are and for the past five years have been in compliance in all material respects with Anti-Corruption Laws.

(b) To the best knowledge of the Company, except to the extent otherwise disclosed in writing to the Purchasers, there are, and in the past five years have been, no allegations, pending or open investigations or pending inquiries, in each case of a Governmental Authority with regard to a potential violation of any Anti-Corruption Law by any of the Company Group Members and Affiliates of the Company Group Members, or any of their respective current or former directors, officers, employees, principal shareholders or owners, or agents.

Section 2.26 Private Offering; No General Solicitation.

(a) Subject to the accuracy of the representations and warranties of the Purchasers set forth in this Agreement and the Purchasers' compliance with their respective covenants set forth in this Agreement, it is not necessary in connection with the issuance of Preferred Shares to the Purchasers in the manner contemplated by this Agreement, to register such Preferred Shares under the Securities Act.

(b) None of the Company, its Affiliates or any Person acting with their approval has offered, sold or solicited any offer to buy and will not, directly or indirectly, offer, sell or solicit any offer to buy, any security of a type or in a manner that would be integrated with the offering or issuance of the Preferred Shares. None of the Company, its Affiliates or any Person acting with their approval has engaged in any form of general solicitation or general advertising (within the meaning of Rule 502(c) of Regulation D) or in any activity involving a public offering (within the meaning of Section 4(a)(2) of the Securities Act) in connection with the offering of the Preferred Shares.

(c) The Preferred Shares will not, on the date they are issued, be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted on a U.S. automated interdealer quotation system.

Section 2.27 No Broker's Fees. None of the Company Group Members is a party to any contract, agreement or understanding with any Person that would give rise to a valid claim against it or the Purchasers for a brokerage commission, finder's fee or like payment in connection with the issuance of the Preferred Shares.

Section 2.28 No Other Purchaser Representations and Warranties. Except for the representations and warranties expressly set forth in Article III hereof and such representations and warranties set forth in the other Preferred Documents, the Company hereby acknowledges that none of the Purchasers nor any of their respective Affiliates, nor any other Person, has made or is making any other express or implied representation or warranty with respect to the Purchasers or any of their respective Affiliates, as applicable, or their respective businesses, operations, liabilities, condition (financial or otherwise) or prospects, including with respect to any information provided or made available to the Company or any of its Representatives or any information developed by the Company or any of its Representatives.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

Each Purchaser severally, and not jointly, represents and warrants to the Company that:

Section 3.1 Organization, Good Standing, Etc. Such Purchaser (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization, (b) has all requisite power and authority to conduct its business as now conducted, and (c) is duly qualified to do business, and are in good standing in each jurisdiction in which the character of the properties owned or leased by them or in which the transaction of their business makes such qualification necessary, except, with respect to this clause (c), where a failure to be so qualified would not reasonably be expected to have a material adverse effect on such Purchaser's ability to perform its obligations hereunder.

Section 3.2 Authorization, Etc. The execution, delivery and performance by such Purchaser of the Preferred Documents (a) has been duly authorized by all necessary action, (b) does not and will not contravene (i) any of its Organizational Documents, (ii) any applicable Law or (iii) any applicable Contractual Obligation binding on or otherwise affecting it, (c) does not and will not result in or require the creation of any Lien upon or with respect to any of its properties, except in the case of clause (b)(ii)-(iii), as would not reasonably be expected to have a material adverse effect on such Purchaser's ability to perform its obligations hereunder.

Section 3.3 Governmental and Shareholder Approvals. No authorization or approval or other action by, and no notice to or filing with any Governmental Authority is required in connection with the due execution, delivery and performance by such Purchaser of any Preferred Document or the consummation of the transactions contemplated by the Preferred Documents, except for (a) those which have been provided or obtained and (b) those notices of filings with any Governmental Authority, which if not obtained or made would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on such Purchaser's ability to perform its obligations hereunder.

Section 3.4 Enforceability of Preferred Documents. This Agreement is, and each other Preferred Document, when delivered hereunder, will be, a legal valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affective the enforcement of creditors' rights generally and general principles of equity.

Section 3.5 Investment Matters.

(a) Such Purchaser is, and was at the time such Purchaser was offered the Preferred Shares, (i) a qualified institutional buyer, (ii) an institutional accredited investor (as such term is defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D) or (iii) a non-U.S. Person (as such term is defined in Regulation S) and will not acquire the Preferred Shares for the account or benefit of any U.S. Person (as such term is defined in Regulation S).

(b) Such Purchaser is acquiring the Preferred Shares for its own account, for investment purposes only and not with a view to any distribution thereof that would not otherwise comply with the Securities Act.

(c) Such Purchaser understands that (i) the Preferred Shares have not been registered under the Securities Act and the Preferred Shares are being issued by the Company in transactions exempt from the registration requirements of the Securities Act and (ii) all or any part of the Preferred Shares may not be offered or sold, except pursuant to effective registration statements under the Securities Act or pursuant to applicable exemptions from registration under the Securities Act and in compliance with applicable state Laws.

(d) Such Purchaser understands that the exemption from registration afforded by Rule 144 promulgated under the Securities Act ("Rule 144") (the provisions of which are known to such Purchaser) depends on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

(e) Except as previously disclosed to the Company or its Affiliate, no portion of the funds or assets that will be used by such Purchaser to pay its respective portion of the Purchase Price or to acquire or hold the Preferred Shares, constitute or will constitute the assets of any (i) employee benefit plan subject to Title I of ERISA, (ii) plan described in and subject to Section 4975 of the Code (each such employee benefit plan and plan described in clauses (i) and (ii) referred to herein as an "ERISA Plan"), (iii) plan, account or other arrangement subject to provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to the fiduciary responsibility or prohibited transaction provisions of Title I of ERISA or Section 4975 of the Code that could cause the underlying assets of the Company to be treated as assets of such plan, account or arrangement (a "Similar Law Plan") or (iv) entity whose underlying assets are deemed to include "plan assets" of any such ERISA Plan or Similar Law Plan pursuant to Section 3(42) of ERISA and any regulations that may be promulgated thereunder or otherwise.

(f) Such Purchaser (i) is, and for so long as it holds any Preferred Shares, will be, a "venture capital operating company" or wholly owned by a "venture capital operating company" or (ii) does not have, and for so long as it holds any Preferred Shares, will not have, "significant equity participation" by benefit plan investors. The term "venture capital operating company" has the meaning assigned to such term in the Department of Labor Regulation Section 2510.3-101.

(g) Such Purchaser has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Preferred Shares and has so evaluated the merits and risks of such investment. Such Purchaser understands that it must bear the economic risk of its investment in the Preferred Shares indefinitely and is able to bear such risk and is able to afford a complete loss of such investment.

(h) Such Purchaser acknowledges that it has reviewed all materials such Purchaser deemed necessary for the purpose of making an investment decision with respect to the Preferred Shares, including information regarding the Transactions, and such Purchaser has evaluated the risks of investing in the Preferred Shares and understands there are substantial risks of loss incidental to the investment and has determined that it is a suitable investment for such Purchaser.

Section 3.6 No Broker's Fees. Such Purchaser is not a party to any contract, agreement or understanding with any Person that would give rise to a valid claim against it or any Company Group Member for a brokerage commission, finder's fee or like payment in connection with the issuance of the Preferred Shares.

Section 3.7 No Other Company Representations and Warranties. Except for the representations and warranties expressly set forth in Article II hereof and such representations and warranties set forth in the other Preferred Documents, such Purchaser hereby acknowledges that none of the Company nor any of their respective Affiliates, nor any other Person, has made or is making any other express or implied representation or warranty with respect to the Company or any of its Subsidiaries, as applicable, or their respective businesses, operations, liabilities, condition (financial or otherwise) or prospects, including with respect to any information provided or made available to such Purchaser or any of its Representatives or any information developed by such Purchaser or any of its Representatives.

ARTICLE IV
CONDITIONS

Section 4.1 Conditions to the Several, Not Joint, Obligations of the Purchasers

The purchase on the Closing Date of the applicable Preferred Shares by the Purchasers from the Company will be subject to the satisfaction or waiver by the Purchasers of the following conditions:

(a) The representations and warranties of the Company set forth in Article II will be true and correct in all material respects (without duplication of any materiality or Material Adverse Effect qualifier therein).

(b) The Company has executed and delivered, and the Purchasers will have received:

(i) a customary legal opinion from Davis Polk & Wardwell LLP;

(ii) all documentation and other information about the Company as has been reasonably requested in writing at least five days prior to the Closing Date by such Purchaser that they reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act (to the extent such documentation has not been previously provided to the Purchasers); and

(iii) a duly executed copy of the Registration Rights Agreement, in substantially the form attached hereto as Exhibit D (the "Registration Rights Agreement");

(iv) a duly executed copy of the Amended and Restated LLC Agreement of the Operating LLC, in substantially the form attached hereto as Exhibit C (the "LLCA").

(c) The Company shall have delivered a copy of the Certificate of Designations duly executed by the Company and filed with the Secretary of State of Delaware, in substantially the form attached hereto as Exhibit B.

(d) The Company shall have consummated the Reorganization.

(e) The Company shall consummate a Qualified IPO substantially concurrently with the Closing.

(f) The Class A-3 Units, Class A-4 Units and Class A-5 Units (each, as defined in the H&W LLC Agreement) shall be recapitalized, repurchased or redeemed in full, and all obligations, preferences and commitments of the Operating LLC in connection therewith shall be terminated or released, in each case, substantially concurrently with the Closing.

(g) The Operating LLC has entered into and delivered to the Purchasers an executed copy of an Amendment to the Financing Agreement in substantially the form attached hereto as Exhibit G.

(h) The Company shall have paid all reasonable and documented out-of-pocket costs and expenses incurred by the Purchasers in connection with the preparation, negotiation, execution and delivery of the Preferred Documents, the Amendment to the Financing Agreement, and the documents and instruments referred to herein and therein and the consummation of the transactions contemplated hereby and thereby.

Notwithstanding anything herein to the contrary, the Company and the Operating LLC will be permitted to make changes to the Registration Rights Agreement, LLCA and/or the Steps Memo prior to Closing in consultation with the Purchasers if such changes do not adversely affect the rights of the Purchasers (as determined in good faith in the sole discretion of the Purchasers).

Section 4.2 Conditions to the Obligations of the Company.

The issuance on the Closing Date of the applicable Preferred Shares by the Company to the Purchasers will be subject to the satisfaction or waiver by the Company of the following conditions:

(a) The representations and warranties of such Purchaser set forth in Article III will be true and correct in all material respects (without duplication of any materiality qualifier therein).

(b) Each Purchaser has executed and delivered, on or prior to the Closing Date, and the Company will have received:

(i) a completed IRS Form W-9 or applicable IRS Form W-8 duly executed by such Purchaser;

(ii) all documentation and other information about such Purchaser as has been reasonably requested in writing at least five days prior to the Closing Date by the Company that it reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act (to the extent such documentation has not been previously provided to the Company); and

(iii) a duly executed copy of the Registration Rights Agreement, in substantially the form attached hereto as Exhibit D;

(iv) a duly executed copy of the LLCA, in substantially the form attached hereto as Exhibit C; and

(v) the Lockup Agreements to be entered into pursuant to Section 5.7 shall have been executed and delivered prior to the launch of a Qualified IPO and shall be in full force and effect.

ARTICLE V
ADDITIONAL COVENANTS

Section 5.1 Further Assurances. The Company will execute and deliver such other documents and papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby.

Section 5.2 Securities Act. For so long as any of the Preferred Shares remain outstanding and constitute "restricted securities" within the meaning of the Securities Act of 1933 of the United States of America, as amended (the "Securities Act"), the Company will make available at the Company's expense, upon request, to any holder of Preferred Shares, and any prospective purchasers thereof, the information specified in Rule 144A(d)(4) under the Securities Act or is then subject to Section 13 or 15(d) of the Exchange Act.

Section 5.3 Use of Proceeds. The proceeds received by the Company hereunder in exchange for the sale of the Preferred Shares to the Purchasers will be contributed to the Operating LLC or used directly by the Company to (i) refinance the Class A Debt (as defined in the Sixth Amended and Restated Limited Liability Company Operating Agreement of H&W Franchise Holding LLC, dated August 31, 2020, as amended), (ii) effect certain transactions in connection with the Reorganization and (iii) pay certain fees and expenses related to the transactions contemplated by the Preferred Documents.

Section 5.4 Indemnification; Expenses.

(a) The Company shall at all times (i) maintain directors' and officers' insurance coverage, in form and substance satisfactory to the Board of Directors of the Company, (ii) maintain customary provisions in its certificate of incorporation and bylaws following completion of a Qualified IPO limiting the liability of directors and providing that the Company will indemnify each of its directors to the fullest extent permitted under the General Corporation Law of the State of Delaware and (iii) offer each of its directors the opportunity to enter into a customary indemnification agreement with the Company, provided, that in each such case all directors of the Company shall be entitled to be covered equally with all other directors of the Company.

(b) The Company hereby acknowledges that an Indemnified Party may have certain rights to indemnification, advancement of expenses and/or insurance provided by other sources. The Company hereby agrees (i) that it (or, to the extent applicable, its insurance provider) is the indemnitor of first resort (i.e., its obligations to an Indemnified Party are primary and any obligation of such other sources to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Indemnified Party are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by an Indemnified Party and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement without regard to any rights an Indemnified Party may have against such other sources, and (iii) irrevocably waives, relinquishes and releases such other sources from any and all claims against such other sources for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by such other sources on behalf of an Indemnified Party with respect to any claim for which such Indemnified Party has sought indemnification from the Company shall affect the foregoing, and such other sources shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Indemnified Party against the Company. Any such other sources are express third party beneficiaries of this Section 5.4(e) and, at the request of any Indemnified Party, the Company shall acknowledge its obligations under this Section 5.4(e) to any such other sources.

(c) In addition, the Company agrees to defend, protect, indemnify and hold harmless each Purchaser and all of their respective Affiliates, directors, officers, equityholders, employees and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket costs and expenses of one outside counsel and one local counsel to the Indemnitees (taken as a whole) in each relevant jurisdiction) incurred by such Indemnitees, whether prior to or from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any third party claim (which shall include, for the avoidance of doubt, any claim made by any equityholder of the Company or the Operating LLC) relating to: (i) the negotiation, preparation, execution or performance or enforcement by the Company of this Agreement, the other Preferred Documents or of any other document executed in connection with the Preferred Shares contemplated by this Agreement, (ii) the breach or inaccuracy as and when made of any of any Fundamental Representation, (iii) any claim, litigation, investigation or proceeding relating to the offer and sale by the Company of the Preferred Shares, the Purchasers' purchase and ownership of the Preferred Shares or the Company's performance under this Agreement or the other Preferred Documents, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Company shall not have any obligation to any Indemnitee under this clause (f) for any Indemnified Matter (x) caused by the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction, or (y) arising from disputes solely among the Purchasers or (z) that has resulted from an intentional breach of such Indemnitee's obligations under this Agreement as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this clause (f) may be unenforceable because it is violative of any law or public policy, each the Company shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. The indemnities set forth in this clause (f) shall survive the repayment or repurchase of the Preferred Shares and termination of this Agreement or the other Preferred Documents.

(d) The Company shall pay promptly, and in any event within the earlier to occur of the Closing and ten (10) Business Days of delivery of an invoice, all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of each Purchaser, regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable and documented out-of-pocket fees, costs, client charges and expenses of one outside counsel and one local counsel in each relevant jurisdiction for the Purchasers (selected by the Purchasers holding a majority of the Preferred Shares), accounting, due diligence, searches and filings and other miscellaneous disbursements arising from or relating to: (i) the negotiation, preparation, execution, delivery, performance and administration of this Agreement, the other Preferred Documents and the documents related thereto, (ii) any requested amendments, waivers or consents to this Agreement, the other Preferred Documents and the documents related thereto, whether or not such documents become effective or are given, (iii) the maintenance, preservation and protection of the Purchasers' rights under this Agreement, the other Preferred Documents and the documents related thereto, (iv) the defense of any claim or action asserted or brought against any Purchaser by any Person that arises from or relates to this Agreement, the other Preferred Documents and the documents related thereto, the Purchasers' claims against the Company or any of its Affiliates under this Agreement, the other Preferred Documents and the documents related thereto, or any and all matters in connection therewith, (v) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement, the other Preferred Documents and the documents related thereto, (vi) the filing of any petition, complaint, answer, motion or other pleading by any Purchaser in connection with this Agreement, the other Preferred Documents and the documents related thereto, (vii) any attempt to collect from the Company under this Agreement, the other Preferred Documents and the documents related thereto, or (viii) the receipt by any Purchaser of any advice from professionals with respect to any of the foregoing. The obligations of the Company under this clause (d) shall survive the repayment or repurchase of the Preferred Shares and termination of this Agreement or the other Preferred Documents.

Section 5.5 Tax Treatment. For U.S. federal and applicable state and local income tax purposes, the Company and holders of the Preferred Shares shall not report on its tax returns or otherwise (including information returns) or otherwise treat (1) any Preferential Coupons (as defined in the Certificate of Designations) or PIK Coupons (as defined in the Certificate of Designations) that have accrued on the Purchased Shares but not have been paid in cash as constructive distributions required to be included into income of any holder of Purchased Shares (or its direct or indirect owners, as applicable) pursuant to Section 305(c) of the Code, or otherwise treat such Preferential Coupons or PIK Coupons as distributions required to be included in income on a current basis or (2) the Purchased Shares as having any redemption premium within the meaning of Treasury Regulations Section 1.305-5(b) (and any corresponding provision of state or local law); except in each case as required by any of the following: (w) a change in relevant law occurring after the Initial Issue Date (as defined in the Certificate of Designations), (x) after the Initial Issue Date, the promulgation of relevant final U.S. Treasury Regulations addressing instruments similar to the Purchased Shares (from and after the effective date of such final regulations), (y) any amendment to the terms of the Certification of Designations that is made with the necessary consent of the holders of the Purchased Shares or (z) a "determination" within the meaning of section 1313(a) of the Code.

Section 5.6 HSR. Upon request by any Purchaser, the Company and such Purchaser shall make any appropriate filings of a Notification and Report Form pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") with respect to the conversion of such Purchaser's 6.50% Series A-1 Convertible Preferred Stock into 6.50% Series A Convertible Preferred Stock as promptly as practicable after the date hereof and supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to use their reasonable best efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable. The Company will pay all costs of the Parties' filings under the HSR Act made pursuant to this Section 5.7.

Section 5.7 Qualified IPO. On or prior to the launch by the Company of a Qualified IPO, each Purchaser shall execute and deliver to the Company and the representatives of the underwriters of such Qualified IPO a Lockup Agreement in substantially the form attached hereto as Exhibit F or in any more favorable form (from the perspective of the lock-up party) entered into by Snapdragon Capital or its Affiliates.

Section 5.8 Shortfall Event. Upon the occurrence of a liquidation, bankruptcy, insolvency proceeding, winding up, reorganization, other insolvency proceeding or dissolution of the Company or the Operating LLC, or a mandatory redemption, or Sale of the Company, in each case in which the holders of the Convertible Preferred Stock do not receive the full Mandatory Redemption Price, Fixed Liquidation Preference, accrued Preferential Return or other amount to which such holders would otherwise be entitled (a "Shortfall Event"), the Operating LLC shall pay or cause to be paid, to the Company an amount in cash (or if no cash is available for distribution, other assets with a corresponding fair market value) in preference and priority to any payments or distributions of any kind to the holders of any LLC Units (as defined in the LLCA) or other junior equity interests of the Operating LLC the maximum amount of any and all amounts required to be distributed, indemnified, reimbursed or otherwise paid by the Operating LLC (i) on the Preferred Units (as defined in the LLCA) of the Operating LLC and/or (ii) with respect to any expenses, liabilities or other obligations described in **Section 13.01** of the LLCA (such amounts, the "Company Priority Amounts"). For so long as a Shortfall Event has occurred and is continuing, until the Company has received the maximum amount of any and all Company Priority Amounts, no distributions or other payments may be made to any holders of LLC Units (as defined in the LLCA) or other junior equity interests of the Operating LLC. Each of the Purchasers, the Company and the Operating LLC acknowledge and agree to the foregoing, will take all necessary steps or actions to effect the foregoing and agree not to contest the validity, priority or enforceability of the Company Priority Amounts or this provision. For so long as a Shortfall Event has occurred and is continuing, if the Company does not take all necessary steps to cause the Operating LLC to enforce all of its rights in respect of the Company Priority Amounts, the Purchasers shall be entitled to take all actions necessary to direct or force the Company to acquire the maximum amount of any and all amounts required to be distributed, indemnified, reimbursed or otherwise paid by the Operating LLC to the Company in respect of the Company Priority Amounts as express third-party beneficiaries of this provision and Sections 3.02(h) and 13.01 of the LLCA.

ARTICLE VI
TERMINATION

Section 6.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned:

(a) By mutual written agreement of the Parties hereto; or

(b) By the Purchasers or the Company if the Closing has not occurred within sixty (60) days following the date hereof (the "Outside Date"); provided, that if prior to the Outside Date, any Party hereto brings any action to enforce specifically the performance of the terms and provisions hereof by any other Party, then the Outside Date shall automatically be extended without further action by any Party hereto until the date that is 30 days following the date on which a final, non-appealable order by a court of competent jurisdiction has been entered into with respect to such action and the Outside Date shall be deemed to be such later date for purposes of this Agreement.

Section 6.2 Effect of Termination. In the event that this Agreement is validly terminated pursuant to Section 6.1, this Agreement shall forthwith become void and of no further force or effect; provided, however, that notwithstanding anything herein to the contrary, (a) this Section 6.2 and Article VII shall survive any termination of this Agreement and (b) the termination of this Agreement shall not relieve any party of any liability or damages incurred or suffered as a result of fraud or intentional breach of this Agreement.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Survival. All representations and warranties made by the Company and the Purchasers contained in this Agreement, or made by or on behalf of them, respectively, pursuant to this Agreement, will survive the execution and delivery of this Agreement and will continue in full force and effect for so long as a Purchaser holds any Preferred Shares after the date hereof. All covenants made herein will survive the Closing according to their respective terms.

Section 7.2 Entire Agreement; Parties in Interest. This Agreement (including the exhibits hereto and the Company Disclosure Letter), and the other Preferred Documents constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between or among the Parties (or their respective affiliates) with respect to the subject matter hereof. This Agreement will be binding upon and inure solely to the benefit of each Party and their respective successors, legal representatives and permitted assigns, and nothing in this Agreement, express or implied, is intended to or will confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, except for the provisions of Section 7.3 which will be enforceable by the beneficiaries contemplated thereby.

Section 7.3 No Recourse. Notwithstanding anything to the contrary in this Agreement, this Agreement may only be enforced by a Party against, and any Proceedings that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, may only be made by such Party against, another Party or, if applicable, such other Party's Affiliates that become party to this Agreement, and no current, former or future Affiliates

of a Party or any of their Affiliates (except for any Affiliates of a Party who become party to this Agreement in their capacity as such), or any of the foregoing Persons' respective current or future Representatives (collectively, the "Related Parties") will have any liability for any liabilities of such Party for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the purchase of the Preferred Shares hereunder or the other Transactions or in respect of any oral representations made or alleged to be made in connection herewith or therewith. In no event will a Party or any of its Affiliates, and each Party agrees not to and to cause its Affiliates not to, seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover losses or other damages in connection therewith from, any Related Party.

Section 7.4 Governing Law. This Agreement and all Disputes arising out of or relating to this Agreement or the transactions contemplated hereby will be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 7.5 Submission to Jurisdiction. Each of the Parties irrevocably agrees that any legal action or proceeding, arising out of or relating to this Agreement, brought by any other Party or its, his or her successors or assigns will be brought and determined in the Court of Chancery in the State of Delaware or the courts of the United States of America for the District of Delaware, and the appellate courts of either of the foregoing, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its, his or her property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the Parties further agrees that notice as provided herein will constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (i) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (ii) that it or its, his or her property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (iii) that (A) the suit, action or proceeding in any such court is brought in an inconvenient forum, (B) the venue of such suit, action or proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 7.6 Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BETWEEN OR AMONG THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.7 Remedies.

(a) Except as otherwise provided herein, all remedies available under this Agreement, at law or otherwise, will be deemed cumulative and not alternative or exclusive of other remedies. The exercise by any Party of a particular remedy will not preclude the exercise of any other remedy.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions from a court of competent jurisdiction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the Parties hereby further waives (i) any defense in any action for specific performance that a remedy at law would be adequate and (ii) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

Section 7.8 Amendments; Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, by the Purchasers holding a majority of the Preferred Shares and the Company. No knowledge, investigation or inquiry, or failure or delay by the Company or any Purchaser in exercising any right hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise of any other right hereunder. No waiver of any right or remedy hereunder will be deemed to be a continuing waiver in the future or a waiver of any rights or remedies arising thereafter.

Section 7.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which constitutes an original, and all of which taken together constitute one instrument. A signature delivered by email or other electronic transmission (including DocuSign) will be considered an original signature.

Section 7.10 Assignment. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective permitted assigns and successors. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by the Company without the prior written consent of the Purchasers, on the one hand, or by any Purchaser without the prior consent of the Company, on the other hand, except that each Purchaser may, without the consent of the Company, assign all or a portion of its rights, interests and obligations hereunder to one or more of such Person's Affiliates to whom such Person transfers any of its Preferred Shares in accordance with the Certificate of Designations. Any assignment or transfer in violation of this Section 7.10 will be null and void *ab initio.*

Section 7.11 Transfer. Notwithstanding anything to the contrary in the Certificate of Designations, and in addition to the transfer restrictions set forth in the Lockup Agreements, the Purchasers may not transfer any Preferred Shares without the consent of the Company, other than (x) to Permitted Transferees (as defined in the Certificate of Designations), (y) from the eight (8th) month anniversary of the Closing Date through the eighteen (18th) month anniversary of the Closing Date, each Purchaser may Transfer up to 49.0% of the Preferred Shares held by such holder and (z) from and after the eighteen (18th) month anniversary of the Closing Date, each Purchaser may transfer all or any portion of its Preferred Shares. In addition, (x) no Purchaser may

sell any shares of Class A Common Stock it receives upon conversion of Preferred Shares for the duration of any lock-up period (after giving effect to any releases granted thereunder) in connection with a Qualified IPO pursuant to Section 4 of the Registration Rights Agreement and (y) from the end of such lock-up period to the twelfth (12th) month following a Qualified IPO, the Purchasers may sell (whether pursuant to a registration statement filed with the SEC covering the offer and sale of such shares of Class A Common Stock, Rule 144 or another available exemption under applicable securities laws) with the such shares of Class A Common Stock in an amount not to exceed, on a pro rata basis (based on the percentage of the shares of Class A Common Stock held by such Purchaser being sold), the amount of shares transferred by any Permitted Party (as defined in the Certificate of Designations). Following the twelfth (12th) month following a Qualified IPO, the Purchasers may sell all or any portion of such shares of Class A Common Stock issued to it upon conversion of the Preferred Shares.

Section 7.12 Severability. In the event that any provision of this Agreement, or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the Parties. The Parties further agree to replace such illegal, void, invalid or unenforceable provision of this Agreement with a legal, valid and enforceable provision that achieves, to the extent possible, the economic, business and other purposes of such illegal, void, invalid or unenforceable provision.

Section 7.13 Notice.

(a) Except as otherwise provided in this Agreement, any notice or other communication required or permitted to be delivered to any Party under this Agreement will be in writing and delivered by (i) email or (ii) registered mail via a national courier service to the following email address or physical address, as applicable:

If to the Company:

Xponential Fitness, Inc.
17877 Von Karman Ave.
Irvine, California 92614,
Attention: John Meloun
Email: john.meloun@xponential.com

and with a copy (which will not constitute notice) to:

Davis Polk & Wardwell LLP
1600 El Camino Road
Menlo Park, CA 94025
Attention: Alan Denenberg
Email: alan.deneberg@davispolk.com

If to any of the Purchasers, at the email address or physical address, as applicable, set forth on such Purchaser's signature page hereto.

with a copy (which will not constitute notice) to:

Latham & Watkins LLP
1271 Avenue of the Americas 10020
New York, NY
Attention: Justin Hamill; Peter Sluka
Email: justin.hamill@lw.com; peter.sluka@lw.com

(b) Notice or other communication pursuant to Section 7.8(a) will be deemed given or received when delivered. Any Party may specify a different address, by written notice to the other Parties. The change of address will be effective upon the other Parties' receipt of the notice of the change of address.

Section 7.14 PATRIOT Act. The Purchasers hereby notify the Company that, pursuant to the requirements of the PATRIOT Act, the Purchasers may be required to obtain, verify and record information that identifies the Company, including its name, address and other information that will allow the Purchasers to identify the Company in accordance with the PATRIOT Act.

Section 7.15 Publicity. All press releases or other public communications or announcements relating to the transactions contemplated hereby, and the method of the release for publication thereof, shall be subject to the prior written approval of the Purchasers and the Company, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that the provisions of this Section 7.15 shall not apply to the extent that a public announcement is required by applicable securities laws, any Governmental Authority or stock exchange rule; provided further, that the Party making such announcement shall use commercially reasonably efforts to consult with the other Parties in advance as to its form, content and timing.

ARTICLE VIII
DEFINITIONS

Section 8.1 Certain Definitions. The following words and phrases have the meanings specified in this Section 8.1:

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person; provided, that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Purchaser or any of its Affiliates. For purposes of this definition, "control" of a Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling," "controlled," "controlled by" and "under common control with" have meanings correlative to the foregoing..

"Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act of 1977, as amended and all other laws, rules and regulations of any jurisdiction applicable to any Company Group Member concerning or relating to bribery or corruption.

"Anti-Money Laundering and Anti-Terrorism Laws" means any applicable Law relating to terrorism, economic sanctions or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and executive orders administered by OFAC, (e) any law prohibiting or directed against terrorist activities or the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Authorized Officer" means, with respect to any Person, any individual (a) holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer, secretary, general counsel, treasurer or authorized representative of such Person and (b) with respect to which the secretary or assistant secretary of such Person has delivered an incumbency certificate to the Purchasers as to the authority of such individual in such position.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York.

"Class A Common Stock" means the Company's Class A Common Stock, par value $0.0001 per share.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Company Disclosure Letter" means the disclosure letter delivered by the Company to the Purchasers prior to entering into this Agreement.

"Company Group Member" means, at any time, the Company and each of its Subsidiaries (after giving effect to the Reorganization).

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

"Environment" the environment, natural resources and any surface, subsurface or physical medium, including: (a) land surface; (b) surface water; (c) groundwater; (d) subsurface strata; and (e) ambient air.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other written communication from any Person or Governmental Authority to the Company or any of its Subsidiaries involving violations of Environmental Laws or Releases of Hazardous Materials (a) from any assets, properties or businesses owned or operated by the Company or any of its Subsidiaries or any predecessor in interest, (b) from adjoining properties or business, or (c) onto any facilities which received Hazardous Materials generated by the Company or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or health and safety matters related to Hazardous Materials.

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

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is under common control with the Company and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"ERISA Event" means (a) a Reportable Event with respect to any Plan, (b) any event that causes any Company Group Member or any of its ERISA Affiliates to incur liability under Section 515 (other than for payment of timely contributions to one or more Multiemployer Plans), 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 of the Internal Revenue Code, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings by the PBGC to terminate a Plan, or (e) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan. "Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Financial Statements" means (a) the audited consolidated balance sheet of the Company Xponential Fitness LLC for the Fiscal Year ended December 31, 2020, and the related consolidated statement of operations, shareholders' equity and cash flows for the fiscal year then ended and (b) the unaudited consolidated balance sheet of Xponential Fitness LLC and its Subsidiaries for the three months ended March 31, 2021, and the related consolidated statement of operations, shareholder's equity and cash flows for the three months then ended.

"Financing Agreement" means that certain Financing Agreement, dated as of April 19, 2021, by and among Xponential Intermediate Holdings, LLC, Xponential Fitness LLC, Wilmington Trust National Association, and the other Borrowers, Guarantors and Lenders party thereto.

"Fiscal Year" means the fiscal year of the Company and its Subsidiaries ending on December 31 of each year.

"Franchise Agreement" means any franchise agreements whether now existing or hereafter entered into by the Company or any of its Subsidiaries and related to the franchising of the business of operating a Franchised Location, and all other agreements with any Franchisee, sub-franchisee or similar Person to which any Company Group Member is a party, in each case, related to the franchising of the business of operating a Franchised Location, all as amended or modified from time to time.

"Franchised Location" means a health and wellness facility owned and operated by a Company Group Member or a Franchisee.

"Franchisee" means any franchisee under a Franchise Agreement.

"Fundamental Representations" means the representations and warranties set forth in Section 2.1, 2.2, 2.3, 2.5, 2.24, 2.25 and 2.27 of this Agreement.

"GAAP" means generally accepted accounting principles in the United States applied on a consistent basis.

"Governmental Authority" means the government of the U.S., any other nation or any political subdivision thereof, whether state, provincial, county, local, or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government in any jurisdiction (including any supranational bodies such as the European Union or the European Central Bank).

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

"Law" means any applicable U.S. or foreign, federal, state, provincial, municipal or local law (including common law), statute, ordinance, rule, regulation, code, policy, directive, standard, license, treaty, judgment, order, injunction, decree or agency requirement of or undertaking to or agreement with any Governmental Authority.

"Lease" means any lease of real property to which any Company Group Member is a party as lessor or lessee.

"Liability" means any indebtedness, loss, damage, claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation).

"Liens" means any liens (statutory or otherwise), deeds of trust, pledges, mortgages, charges, encumbrances, security interests, restrictions on voting or transfer (other than transfer restrictions imposed under applicable securities Laws, the Lockup Agreement or the Certificate of Designations) or any other claim of any third party.

"Material Adverse Effect" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, resulting in a material adverse change in, or a material adverse effect on, (a) the operations, business, assets properties or financial condition of the Company Group Members taken as a whole, (b) the Company's ability to perform its obligations under the Preferred Documents in such a way as would reasonably be expected to cause the Company to be unable to pay or perform its payment obligations under Preferred Documents when due, (c) the material rights or remedies (taken as a whole) of the Purchasers under the Preferred Documents, taken as a whole, or (d) the legality, validity or enforceability against the Company of any of the Preferred Documents.

"Material Contract" means, with respect to any Person, (a) each contract or agreement to which that Person or any of its Subsidiaries is a party involving aggregate consideration payable by that Person or Subsidiary of $500,000 or more in any Fiscal Year and (b) all other contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew (without contemporaneous replacement of substantially equivalent value) by any party could reasonably be expected to have a Material Adverse Effect.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or may be an obligation to contribute of) the Company or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Company or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

"OFAC" means the United States Department of the Treasury's Office of Foreign Assets Control.

"Organizational Documents" means the articles or certificate of incorporation or formation, certificate of limited partnership, joint venture or partnership agreement, operating or limited liability company agreement, by-laws or other constitutional, governing or organizational document of any Person other than an individual, each as from time to time amended or modified.

"Operating LLC" means Xponential Intermediate Holdings LLC, a Delaware limited liability company.

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Permitted Liens" means any of the following (a) Liens for taxes which are not yet due and payable or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established on the Financial Statements, (b) statutory or common law Liens to secure landlords, lessors or renters under leases or rental agreements, (c) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, old age pension or other social security programs mandated under applicable Laws, (d) Liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like Liens arising in the ordinary course of business, (e) restrictions on transfer of securities imposed by applicable state and federal securities Laws, (f) the interests

of the lessors under the Leases and Liens encumbering the interests of the lessors of, or the interests of the holders of any other superior interests in, the real property subject to the Leases, (g) Liens described on Schedule 7.1 of the Company Disclosure Letter, (h) Liens imposed or promulgated by applicable Laws with respect to real property and improvements, including zoning regulations, (i) licenses and sub-licenses of intellectual property granted by any Company Group Member in the ordinary course of business that do not materially detract from the value subject thereto and (j) easements, rights of way, covenants, restrictions and other Liens which do not adversely impact the Company and its Subsidiaries, taken as a whole, in any material respect.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" shall mean any "employee benefit plan" as defined in Section 3 of ERISA (other than a Multiemployer Plan) subject to Title IV of ERISA maintained or contributed to by the Company or any ERISA Affiliate or to which the Company or any ERISA Affiliate has or may have any liability or obligation to contribute.

"Preferred Documents" means this Agreement, the Registration Rights Agreement and the Certificate of Designations.

"Pro Rata Share" means, with respect to each Purchaser, the percentage set forth in Exhibit A opposite such Purchaser's name under the heading "Pro Rata Share."

"Proceeding" means any claim, action, demand, suit, litigation, investigation, inquiries or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending claim, investigation, litigation or proceeding).

"Purchase Price" means, with respect to any Purchaser, the amount set forth opposite such Purchaser's name on Exhibit A under the heading "Purchase Price".

"Qualified IPO" means a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act filed with the SEC covering the offer and sale of Class A Common Stock; provided that (i) the aggregate gross proceeds from such offering are not less than $100.0 million and (ii) the aggregate gross proceeds from such offering to the Company are not less than $75.0 million and following which the Class A Common Stock is listed on a nationally recognized stock exchange.

"Release" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Materials into the Environment or within any building, structure, facility or fixture.

"Reorganization" means the corporate reorganization structured and consummated substantially consistent with the Up-C Steps Memo attached hereto as Exhibit E (the "Steps Memo").

"Reportable Event" means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Representatives" means, with respect to any Person, such Person's officers, directors, partners, limited partners, investors, lenders, rating agencies, managed accounts, employees, investment bankers, attorneys, accountants and other advisors, agents and representatives.

"Sanctioned Country" means, at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions.

"Sanctioned Person" mean, at any time, (a) any Person that is the subject or target of any Sanctions, (b) any Person located, organized, operating or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom or (c) any other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (a) a majority of the shares of securities or other equity interests having ordinary voting power for the election of members of the board of managers or other governing body (other than securities or interests having such power only by reason of the happening of a contingency that has not yet happened) are at the time beneficially owned, (b) more than half of the issued equity interests is at the time beneficially owned, or (c) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" will refer to a Subsidiary or Subsidiaries of the Company.

"Taxes" means all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings (including backup withholding) or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto.

"Transactions" means the transactions contemplated by this Agreement.

"U.S." means the United States of America.

Section 8.2 Construction. The Parties intend that each representation, warranty, covenant and agreement contained in this Agreement will have independent significance. The headings are for convenience only and will not be given effect in interpreting this Agreement. References to sections, articles or exhibits are to the sections, articles and exhibits contained in, referred to by or attached to this Agreement, unless otherwise specified. Disclosure of any item in any section or subsection of the Company Disclosure Letter will be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on

the face of such disclosure. The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “include,” “includes” and “including” in this Agreement mean “include/includes/including without limitation.” Except as the context otherwise provides, the words “either,” “or,” “neither,” “nor” and “any” are not exclusive. All references to $, currency, monetary values and dollars set forth herein mean U.S. dollars. The use of the masculine, feminine or neuter gender or the singular or plural form of words will not limit any provisions of this Agreement. References to a Person also include its permitted assigns and successors. A statement that an item is listed, disclosed or described means that it is correctly listed, disclosed or described, and a statement that a copy of an item has been delivered means a correct and accurate copy of such item has been delivered. Any reference to a statute refers to the statute, any amendments or successor legislation and all rules and regulations promulgated under or implementing the statute, as in effect at the relevant time. The word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not mean simply “if.” All references to the knowledge of the Company or any Subsidiary of the Company or facts known by any such Person will mean actual knowledge of any Authorized Officer of such Person. Whenever this Agreement refers to a number of days, such number will refer to calendar days, unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day. Any reference herein to any Law, contract, agreement or other instrument, including the governing documents of any Person will be construed as referring to such Law, contract, agreement or instrument as amended or modified or, in the case of a Law, codified or reenacted, in each case, in whole or in part, and as in effect from time to time. The Parties acknowledge and agree that (a) each Party and its counsel has reviewed, or has had the opportunity to review, the terms and provisions of this Agreement, (b) any rule of construction to the effect that any ambiguities are resolved against the drafting Party will not be used to interpret this Agreement, and (c) the provisions of this Agreement will be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of such previous drafts of this Agreement or any of the other Preferred Document or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any other Preferred Document.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date first above written.

THE COMPANY:

XPONENTIAL FITNESS, INC.

By: /s/ John Meloun
Name: John Meloun
Title: CFO

PURCHASERS:

MSD CREDIT OPPORTUNITY MASTER FUND, L.P.
LOMBARD INTERNATIONAL LIFE LTD., on behalf of its segregated account BIGVA0005
LOMBARD INTERNATIONAL LIFE LTD., on behalf of its segregated account BIGVA0005
LOMBARD INTERNATIONAL LIFE LTD., on behalf of its segregated account BIGVA0006
MSD PRIVATE CREDIT OPPORTUNITY MASTER FUND 2, L.P.
MSD PRIVATE CREDIT OPPORTUNITY MASTER FUND, L.P.
MSD SBAFLA FUND, L.P.
MSD SIF HOLDINGS, L.P.
MSD SPECIAL INVESTMENTS FUND, L.P.

By: /s/ Kenneth Gerold
Name: Kenneth Gerold
Title: Authorized Signatory

Address for Notices:

c/o MSD Partners, L.P.
645 Fifth Avenue, 21st Floor
New York, NY 10022
Attention: Ken Gerold
Jeremy Herz
Simon Crocker
Email: kgerold@msdpartners.com
jherz@msdpartners.com
scrocker@msdpartners.com

REDWOOD MASTER FUND LTD.

By: Redwood Capital Management, LLC, its Investment Manager

By: /s/ Sean Sauler
Name: Sean Sauler
Title: Deputy CEO

DESALKIV PORTFOLIOS LLC

By: /s/ Marianna Fassinotti
Name: Marianna Fassinotti
Title: Authorized Signatory

Address for Notices:

c/o DESALKIV Portfolios LLC
1166 Avenue of the Americas, 9th Floor
New York, NY 10036
Attention: Seth Charnow
Marianna Fassinotti
Email: Seth.Charnow@deshaw.com
Marianna.Fassinotti@deshaw.com