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

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 26, 2024

THE ONE GROUP HOSPITALITY, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-37379**	**14-1961545**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

1624 Market Street, Suite 311
Denver, Colorado 80202
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (646) 624-2400

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	STKS	Nasdaq

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Stock Purchase Agreement

On March 26, 2024, The ONE Group Hospitality, Inc. (the "Company"), TOG Kaizen Acquisition, LLC, a wholly owned subsidiary of the Company ("Buyer"), Safflower Holdings LLC and Safflower Holdings Corp. entered into a stock purchase agreement (the "Stock Purchase Agreement") pursuant to which Buyer will purchase 100% of the issued and outstanding equity interests of Safflower Holdings Corp. from Safflower Holdings LLC, for $365.0 million in cash, subject to customary adjustments for indebtedness, cash, net working capital and seller transaction expenses (the "Acquisition"). Safflower Holdings Corp. beneficially owns most of the Benihana restaurants, as well as all of the RA Sushi restaurants, in the United States. It also franchises Benihana locations in the U.S., Latin America (excluding Mexico) and the Caribbean.

Closing of the Acquisition is subject to customary closing conditions, including the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 expiring or being terminated, among other things. There is no financing contingency for the Acquisition.

The Company has guaranteed the obligations of TOG Kaizen Acquisition, LLC under the Stock Purchase Agreement.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Stock Purchase Agreement, which is attached hereto as Exhibit 10.1 and incorporated herein by reference, and a press release regarding the Acquisition is furnished as Exhibit 99.1.

Investment Agreement

In connection with the Acquisition, the Company, HPC III Kaizen LP, an affiliate of Hill Path Capital LP ("HPC Investor"), and HPS Investment Partners, LLC ("HPS Investor" and collectively with HPC Investor, "Investors") entered into an investment agreement (the "Investment Agreement") whereby the Investors agreed to purchase (a) an aggregate of 160,000 shares of the Company's Series A Preferred Stock, par value $0.0001 per share (the "Preferred Stock"), at a price and with a liquidation preference of $1,000 per share; (b) warrants (in the form attached to the Investment Agreement, the "Penny Warrants") to purchase a number of shares of Common Stock of the Company that in the aggregate will represent 5.33% of the fully diluted shares of Common Stock of the Company at closing at an exercise price of $0.01 per share; and (c) warrants (in the form attached to the Investment Agreement, the "Market Warrants") to purchase, in the aggregate, 1,066,667 shares of Common Stock of the Company, at an exercise price of $10.00 per share, in each case, in a private placement exempt from registration under the Securities Act of 1933. For purposes of calculating the number of shares of Common Stock initially issuable under the Penny Warrants, fully diluted shares of Common Stock means: (a) the number of all outstanding shares of Common Stock of the Company (excluding any held by the Company in treasury), plus (b) the number of all outstanding stock options of the Company (both vested and unvested), plus (c) the number of all outstanding unvested RSUs and PSUs of the Company, plus (d) the number of shares of Common Stock issuable pursuant to the Penny Warrants. The Preferred Stock will be issued at a 5% original issue discount or issuance fee, at the option of the Investors. The terms of the Preferred Stock will be established by the filing of a certificate of designations in the form attached to the Investment Agreement (the "Certificate of Designations") with the Delaware Secretary of State. The Preferred Stock will be non-voting and non-convertible; will have compounding dividends that begin at a rate of 13.0% per annum and increase over time at specified intervals; will be subject to optional redemption by the Company and mandatory redemption following specified events and in certain circumstances upon the exercise by the holders of a majority of the outstanding shares of Preferred Stock of an option to deliver written notice to the Company to require redemption, in each case, for specified prices; and will grant certain consent rights for the holders of a majority of the outstanding shares of Preferred Stock for specified matters.

The Investment Agreement contains various representations, warranties, covenants, closing conditions and termination provisions and will, effective at the closing of the transactions contemplated thereby, grant the HPC Investor the right to designate two representatives for appointment and nomination to the Company's Board of Directors subject to its terms. Under the Investment Agreement, the Company also agreed to enter into a registration rights agreement in the form attached thereto with the Investors at the closing of pursuant to which the Company will agree to register for resale the

Penny Warrants, the Market Warrants and the shares of common stock issuable upon exercise of the Penny Warrants and Market Warrants (the "Registration Rights Agreement").

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Investment Agreement and the forms of Certificate of Designations, Penny Warrant, Market Warrant and Registration Rights Agreement, which are attached hereto as Exhibit 10.2, 10.3, 10.4, 10.5 and 10.6, respectively, and each of which is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The applicable information set forth in Item 1.01 of this Form 8-K is incorporated by reference in this Item 3.02.

Item 7.01 Regulation FD Disclosure.

Press Release

On March 26, 2024, the Company issued a press release announcing entry into the Stock Purchase Agreement, the Investment Agreement and the Debt Commitment Letter (as defined below). A copy of the press release is furnished as Exhibit 99.1 and incorporated by reference into this Item 7.01.

Investor Presentation

On March 26, 2024, the Company posted on its website, www.togrp.com, under "Investor Relations," an investor presentation (the "Investor Presentation"). A copy of the Investor Presentation that was posted by the Company is furnished as Exhibit 99.2 hereto and is incorporated in this Item 7.01 by reference.

The information provided pursuant to this Item 7.01, including Exhibit 99.1 and Exhibit 99.2 in Item 9.01, is "furnished" and shall not be deemed to be "filed" with the SEC or incorporated by reference in any filing under the Exchange Act or the Securities Act, except as shall be expressly set forth by specific reference in any such filings.

Item 8.01. Other Events.

In connection with the Acquisition, pursuant to an irrevocable commitment letter, dated March 26, 2024 (the "Debt Commitment Letter"), provided to The ONE Group, LLC by Deutsche Bank AG New York Branch, Deutsche Bank Securities Inc., HPS Investment Partners, LLC and HG Vora Capital Management, LLC (collectively, the "Initial Lenders"), the Initial Lenders committed to provide, on the terms and subject to the conditions set forth in the Debt Commitment Letter, at the closing of the Acquisition, a $350.0 million senior secured term loan facility (the "Term Loan Facility") and a $40.0 million senior secured revolving credit facility (the "Revolving Facility", and together with the Term Loan Facility, the "Facilities"), up to $10.0 million of which will be available in the form of letters of credit.

The Term Loan Facility will not be subject to a financial covenant and the Revolving Facility's financial covenant will apply only after 35% of the Revolving Facility's capacity has been drawn.

The Term Loan Facility will bear interest at a margin over a reference rate selected at the option of the borrower. The margin for the Term Loan Facility will be 6.5% per annum for SOFR borrowings and 5.5% per annum for base rate borrowings. The Term Loan Facility will mature on the fifth anniversary of the date of the related loan agreement.

The Revolving Facility will bear interest a margin over a reference rate selected at the option of the borrower. The margin for the Revolving Facility will be set quarterly based on the Company's Consolidated Net Leverage Ratio for the preceding four fiscal quarter period and will range from 5.5% to 6% per annum for SOFR borrowings and 4.50% to 5.00% for base rate borrowings. The Revolving Facility will mature on the date that is fifty-four months after the date of the related loan agreement.

The Facilities will be used to finance the Acquisition as well as refinance the Company's existing credit agreement with Goldman Sachs Specialty Lending Group, L.P. and Goldman Sachs Bank USA (the "Refinancing") and to pay fees and expenses in connection with the Acquisition, the Refinancing, the issuance and sale of the Preferred Stock and incurrence of the Facilities.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

Exhibit No.	Description
10.1	Stock Purchase Agreement dated March 26, 2024 between Safflower Holdings LLC, Safflower Holdings Corp., TOG Kaizen Acquisition, LLC and The ONE Group Hospitality, Inc..
10.2	Investment Agreement dated March 26, 2024 between The One Group Hospitality, Inc., HPS Investment Partners, LLC and HPC III Kaizen LP.
10.3	Form of Certificate of Designation.
10.4	Form of Penny Warrant.
10.5	Form of Market Warrant.
10.6	Form of Registration Rights Agreement.
99.1	Press Release dated March 26 2024.
99.2	Investor Presentation.

SIGNATURES

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

Dated: March 26, 2024

THE ONE GROUP HOSPITALITY, INC.

By: /s/ Tyler Loy
Name: Tyler Loy
Title: Chief Financial Officer

STOCK PURCHASE AGREEMENT

by and among

SAFFLOWER HOLDINGS LLC, as Seller

SAFFLOWER HOLDINGS CORP., as the Company

TOG KAIZEN ACQUISITION, LLC, as Buyer

and

THE ONE GROUP HOSPITALITY, INC., as Parent

Dated as of March 26, 2024

NOTE TO EXHIBIT: The schedules and exhibits to this Stock Purchase Agreement, including the Disclosure Schedules, are not filed herewith. The Company agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

Explanatory Note: The Stock Purchase Agreement (the "Agreement") contains representations and warranties by the parties thereto made only for the purposes of the Agreement. The Agreement is filed with this report only to provide investors with information regarding its terms and conditions, and not to provide any other factual information regarding the Company or its business. A party's representations and warranties were made solely for the benefit of the other party or parties and (i) were not intended to be treated as categorical statements of fact, but rather as a way to allocate risk if a representation and warranty proves to be inaccurate; (ii) may have been qualified in the Agreement by disclosures that were made to the other party or parties in connection with the negotiation of the Agreement (provided that any specific facts that contradict the representations and warranties in the Agreement in any material respect have been disclosed); (iii) may apply contract standards of "materiality" that are different from "materiality" under the applicable securities laws; and (iv) were made only as of the date of the Agreement or such other date or dates as may be specified in the Agreement. Accordingly, they should not be relied upon by investors as statements of factual information.

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SCHEDULES

EXHIBITS

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "***Agreement***"), dated as of March 26, 2024, is made by and among Safflower Holdings LLC, a Delaware limited liability company ("***Seller***"); Safflower Holdings Corp., a Delaware corporation (the "***Company***"); TOG Kaizen Acquisition, LLC, a Delaware limited liability company and wholly-owned subsidiary of Parent ("***Buyer***"); and The ONE Group Hospitality, Inc., a Delaware corporation ("***Parent***"). Seller, the Company, Parent and Buyer shall be referred to herein, from time to time, collectively as the "***Parties***." Capitalized terms used, but not otherwise defined herein have the meanings ascribed to such terms in Article 1.

WHEREAS, as of the date hereof, Seller owns two hundred (200) shares of the Company's common stock, par value $0.01 per share (the "***Shares***"), which constitute 100% of the issued and outstanding equity interests of the Company;

WHEREAS, the board of directors (or equivalent managing body) of each of Parent and Buyer has unanimously approved the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, and determined it advisable and in the best interests of Parent and Buyer and each of their respective stockholders; and

WHEREAS, the Parties desire that, upon the terms and subject to the conditions hereof, Buyer will purchase from Seller, and Seller will sell, assign, transfer and deliver to Buyer, all of the Shares.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, the Company, Parent and Buyer hereby agree as set forth below.

ARTICLE 1
CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms have the respective meanings set forth below.

"***2022 Audited Financial Statements***" has the meaning set forth in Section 3.4(a).

"***2023 Audited Financial Statements***" has the meaning set forth in Section 3.4(a).

"***401(k) Plans***" has the meaning set forth in Section 6.9(d).

"***Accounting Firm***" has the meaning set forth in Section 2.3(b)(ii).

"***Accounting Principles***" means U.S. GAAP, applied on a basis consistent with the periods presented in the Audited Financial Statements, using the same accounting principles, practices, methodologies and procedures as were used by the Company in the preparation of the 2023 Audited Financial Statements; provided, that if the accounting principles, practices, methodologies and procedures used in the preparation of the 2023 Audited Financial Statements are inconsistent with U.S. GAAP in effect as of the Closing Date, then the accounting principles, practices,

methodologies and procedures used in the preparation of the 2023 Audited Financial Statements shall control; provided, further, that if the accounting principles, practices, methodologies and procedures used in the preparation of the 2023 Audited Financial Statements are inconsistent with the following defined terms contained in this Agreement, then such defined terms shall control: "Cash and Cash Equivalents," "Indebtedness," "Net Working Capital," "Seller Expenses," "Transfer Taxes" and "Transaction Tax Deductions".

"***Action***" has the meaning set forth in Section 3.8.

"***Actual Adjustment***" means (x) the Cash Purchase Price as finally determined pursuant to Section 2.3(b) minus (y) the Estimated Cash Purchase Price.

"***Adjustment Escrow Account***" has the meaning set forth in Section 2.3(a)(i).

"***Adjustment Escrow Amount***" has the meaning set forth in Section 2.3(a)(i).

"***Adjustment Escrow Funds***" means, at any time, the portion of the Adjustment Escrow Amount then remaining in the Adjustment Escrow Account plus all interest and income then held in the Adjustment Escrow Account.

"***Affiliate***" means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person, and the term " Affiliated" shall have a meaning that is correlative thereto. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto. For the avoidance of doubt, (i) employees of any Group Company are not Affiliates of any Group Company and (ii) in no event shall Seller or any Group Company be considered an Affiliate of any portfolio company or investment fund affiliated with Angelo, Gordon & Co., L.P.

"***Affiliate Agreement***" has the meaning set forth in Section 3.6(a)(xi).

"***Agreement***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Alternate Financing***" has the meaning set forth in Section 6.15.

"***Ancillary Documents***" means, collectively, the Escrow Agreement and each other certificate or instrument delivered pursuant to Section 7.2 and Section 7.3 hereof.

"***Antitrust Laws***" means the HSR Act, the Sherman Act, the Clayton Act, the Federal Trade Commission Act and any other United States federal or state or foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade or lessening of competition through merger or acquisition.

"***ASC 842***" means the Accounting Standards Update No. 2016-02 Leases.

"***Assets***" has the meaning set forth in Section 3.17(d).

"***Audited Financial Statements***" has the meaning set forth in Section 3.4(a).

"***Balance Sheet***" has the meaning set forth in Section 3.4(a).

"***Base Cash Consideration***" means $365,000,000.

"***Business Day***" means a day, other than a Saturday or Sunday, on which commercial banks in New York, New York, are open for the general transaction of business.

"***Buyer***" has the meaning set forth in the introductory paragraph to this Agreement.

"***CARES Act***" means the Coronavirus Aid, Relief, and Economic Security Act, as amended, and the rules, regulations and other guidance promulgated thereunder.

"***Cash and Cash Equivalents***" means all cash and cash equivalents (including bank account balances, security deposits, utility deposits, credit card receivables, restricted cash and any cash held at any Leased Real Property) of the Group Companies as of the Measuring Time, determined on a consolidated basis, in each case, including cash resulting from checks, wires, drafts and credit card receivables, deposited, initiated or charged, as applicable, prior to the Measuring Time that clear thereafter (but only to the extent that such amounts are not included in the calculation of the Net Working Capital Adjustment), less the amounts of any issued but uncleared checks, drafts, overdrafts and wires issued prior to the Measuring Time that clear thereafter (but only to the extent that such amounts are not included in the calculation of the Net Working Capital Adjustment), in each case, without giving effect to the transactions contemplated hereby.

"***Cash Purchase Price***" means (i) the Base Cash Consideration; plus (ii) the Net Working Capital Adjustment (which may be a negative number); plus (iii) Cash and Cash Equivalents; minus (iv) Closing Date Indebtedness; minus (v) Unpaid Seller Expenses.

"***Cash Purchase Price Dispute Notice***" has the meaning set forth in Section 2.3(b)(ii).

"***Closing***" has the meaning set forth in Section 2.1.

"***Closing Date***" has the meaning set forth in Section 2.1.

"***Closing Date Indebtedness***" means the Indebtedness as of the Measuring Time.

"***COBRA***" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state Law.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended.

"***Commitment Letters***" has the meaning set forth in Section 5.11.

"***Company***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Company Material Adverse Effect***" means any event, fact, condition, occurrence, effect, development, circumstance, matter or change (each, an "***Effect***") that, individually or in the

aggregate, together with all other Effects, (a) has had, or would reasonably be expected to have, a material adverse effect upon the financial condition, business, results of operations or assets or liabilities of the Group Companies, taken as a whole, or (b) would reasonably be expected to prevent, materially delay or materially impede the performance by Seller or the Company of their respective obligations under this Agreement or the consummation of the transactions contemplated herein; *provided*, *however*, that "***Company Material Adverse Effect***" shall not include in the case of clause (a) any Effect to the extent resulting from any of the following that occurs on or after the date of this Agreement: (i) conditions affecting the United States economy or any foreign economy generally, or any regulatory environment in the United States and elsewhere in the world; (ii) any national, international or supranational political, geopolitical or social conditions, including any civil commotion, civil disorder, or any other type of civil unrest (including riots, public demonstrations, protests, looting, and revolutions), the threat, engagement, cessation or escalation by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military, cyber or terrorist attack upon the United States or any other country, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or any other country; (iii) changes to financial, banking, credit, currency, commodity (including food), capital or securities markets (including any disruption thereof and any increase or decrease therein), changes to the price of any market index or changes in interest rates or exchange rates; (iv) changes or prospective changes in U.S. GAAP, accounting standards or the interpretation or enforcement thereof; (v) changes or prospective changes after the date hereof in any Law or any action required to be taken under any Laws by which any Group Company (or any of their respective assets or properties) is bound; (vi) any change that is generally applicable to the industries or markets in which the Group Companies operate; (vii) any national or international calamities, crises or natural disasters (including those arising from storms, hurricanes, tornados, flooding, earthquakes, volcanic eruptions, epidemics or pandemics (including COVID-19) or other similar events or force majeure events, together with any restrictions, sanctions, other limitations or policies enacted or applied by a Governmental Entity in response to any of the foregoing (including any COVID-19 Measures)); (viii) any changes to the credit rating of any Group Company (although any facts and circumstances that may have given rise or contributed to any such changes that are not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect); (ix) the negotiation, execution, announcement or existence of this Agreement or the transactions contemplated hereby, the identity of Buyer, its Affiliates or their respective financing sources or any communication by Buyer or any of its Affiliates of its plans or intentions (including in respect of officers or employees) with respect to any of the business of the Group Companies (including any impact on relationships, contractual or otherwise, with clients, vendors, partners, employees, regulators or others having relationships with any Group Company); (x) any action taken by Seller, any Group Company or their respective Affiliates contemplated, permitted or required by this Agreement or the Ancillary Documents (including the obtaining of approval or consent from any Governmental Entity or other third-party in connection with the consummation of the transactions contemplated hereby and thereby) or at Buyer's request or with Buyer's consent; (xi) the failure to take any action by Seller, any Group Company or their respective Affiliates if that action is prohibited by this Agreement or the Ancillary Documents and Buyer either did not consent to such action or withheld, delayed or conditioned its consent; (xii) any act or omission by Buyer or its Affiliates occurring from and after the date hereof; (xiii) any Effect

that is cured by Seller or any Group Company; or (xiv) any failure by the Group Companies to meet any internal or published projections, forecasts, estimates or predictions of revenue, earnings, cash flow or cash position and any seasonal changes in the results of operations of the Group Companies for any period ending prior to, on or after the date of this Agreement (although any facts and circumstances that may have given rise or contributed to any such failure that are not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect); *provided*, *however*, that Effects set forth in the foregoing clauses (i) through (vii) may be taken into account in determining whether there has been or is a Company Material Adverse Effect, to the extent that such Effects have a disproportionate adverse effect on the financial condition, business, results of operations, assets or liabilities of the Group Companies, taken as a whole, compared to other companies of similar size operating in the same industry as the Group Companies.

"***Competing Transaction***" has the meaning set forth in Section 6.5.

"***Confidentiality Agreement***" means that certain Confidentiality Agreement, dated as of June 15, 2023, by and between the Seller and Buyer.

"***Continuing Employees***" has the meaning set forth in Section 6.9(a).

"***COVID-19***" means the COVID-19 pandemic, including any evolutions or mutations of the COVID-19 disease, and any further epidemics or pandemics arising therefrom.

"***COVID-19 Measures***" means any impact of COVID-19, including any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive or guidelines promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19.

"***Credit Agreement***" means that certain Credit Agreement, dated June 28, 2018, by and among Ally Bank, Seller, the Company, Benihana Inc., and the lenders identified on the signature pages thereto.

"***Data Protection Requirements***" means (i) all applicable laws, rules, regulations and orders of any Governmental Entity in any jurisdiction worldwide governing data privacy, data protection, or information security in the Processing of Personal Information, including (but solely to the extent applicable) the CAN-SPAM Act, the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Children's Online Privacy Protection Act, the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act, the Gramm Leach Bliley Act, the California Consumer Privacy Act, the Colorado Privacy Act, the Connecticut Data Privacy Act, the Virginia Consumer Data Protection Act, the General Data Protection Regulation (EU) 2016/679 ("***GDPR***"), or any national laws or regulations implementing GDPR, and any security breach notification or disclosure laws; (ii) the Payment Card Industry Data Security Standard, as applicable; (iii) any provisions of contracts or agreements, to which any Group Company is party governing data privacy, data protection, or information security; and (iv) any statement in any advertisements, promotions, publications, or other documents or materials that a Group Company

provides or makes available to any of the Group Company's customers in any form or medium relating to data privacy, data protection, or information security.

"***D&O Claim***" has the meaning set forth in Section 6.7(a).

"***D&O Costs***" has the meaning set forth in Section 6.7(a).

"***D&O Expenses***" has the meaning set forth in Section 6.7(a).

"***D&O Indemnifying Party***" has the meaning set forth in Section 6.7(a).

"***D&O Indemnitees***" has the meaning set forth in Section 6.7(a).

"***Data Room***" has the meaning set forth in Section 10.5.

"***Debt Commitment Letter***" has the meaning set forth in Section 5.11.

"***Debt Financing***" has the meaning set forth in Section 5.11.

"***Debt Financing Sources***" means the collective reference to each lender and each other Person (including each agent and each arranger) that have committed to provide or arrange or otherwise entered into agreements in connection with the Debt Financing and the other transactions contemplated hereby (including any commitment letters, engagement letters, credit agreements, loan agreements or indentures relating thereto (and any joinders or amendments thereof)), together with each former, current and future Affiliate thereof and each former, current and future officer, director, employee, member, manager, partner, attorney, agent, representative and permitted successor and assign of each of such lender, other Person or Affiliate.

"***Deferred Compensation Plan***" means the Nonqualified Deferred Compensation Plan of Benihana, Inc., adopted April 27, 2010.

"***Employee Benefit Plan***" means each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA) and each other pension, profit-sharing or other retirement, bonus, deferred compensation, incentive compensation, stock bonus, stock appreciation, stock purchase, stock ownership, restricted stock, restricted stock unit, stock option or other equity-based (whether real or phantom), employment, consulting, vacation, holiday, sick leave, welfare benefit, paid time off, leave of absence, tax gross up, disability, death benefit, cafeteria, hospitalization, material fringe benefit, medical, dental, vision, life or other insurance, termination, retention, change in control or severance plan, program, policy or contract) and other material benefit or compensation plans, agreements or commitments, in each case, whether or not subject to ERISA, (i) under which any current or former director, officer, employee or consultant of any Group Company has any right to benefits from any Group Company, (ii) to which any Group Company makes or is required to make contributions with respect to such directors, officers, employees or consultants, (iii) which are maintained, sponsored, contributed to, or required to be contributed to by any Group Company or any trade or business (whether or not incorporated) which would be treated at any relevant time as a single employer with any Group Company under Section 414 of the Code or Section 4001 of ERISA (an "***ERISA Affiliate***"), or (iv) in respect of which any Group Company or ERISA Affiliate has or may have any obligation to contribute or

other liability; other than any benefit or compensation plan or arrangement maintained by a Governmental Entity. The term "Employee Benefit Plan" shall also include any plan, program, policy, arrangement or contract with respect to which any Group Company or any ERISA Affiliate may have liability (including potential, secondary or contingent liability) under Title IV of ERISA or otherwise to any Person and including any liability by reason of any Person's being or having been an ERISA Affiliate.

"***Environmental Laws***" means all Laws in effect concerning (i) pollution or protection of the environment; (ii) the use, generation, handling, transportation, treatment, storage, disposal, discharge, release, control or cleanup of, or exposure of any person to, any pollutant, contaminant, toxic or otherwise hazardous materials, substances or wastes; or (iii) remediation or restoration of the environment.

"***Environmental Permits***" has the meaning set forth in Section 3.10(b).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

"***Escrow Agent***" has the meaning set forth in Section 2.3(a)(i).

"***Escrow Agreement***" has the meaning set forth in Section 2.3(a)(i).

"***Estimated Closing Statement***" has the meaning set forth in Section 2.3(a).

"***Estimated Cash Purchase Price***" has the meaning set forth in Section 2.3(a).

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

"***Fee Letter***" has the meaning set forth in Section 5.11.

"***Financial Statements***" has the meaning set forth in Section 3.4(a).

"***Fraud***" means a false statement of a material fact with respect to the making of any of the representations and warranties by a Party as set forth in this Agreement or in any other Ancillary Document (a) where the Party making such false statement (i) has actual knowledge (as opposed to constructive knowledge) of the falsity of such statement and that such falsity would constitute a breach of any of the representations and warranties made by the Party as set forth in this Agreement or in any other Ancillary Documents, (ii) makes such false statement with the intent to deceive the Party to whom such false statement is made and (iii) makes such false statement with the intent to induce reliance in the Party to whom such false statement is made, and (b) where the Party to whom such false statement is made (i) justifiably relies on such false statement and (ii) suffers actual damages as a result of such reliance.

"***Fundamental Representations***" means the representations and warranties contained in Section 3.1(a) (Organization and Qualification), Section 3.2 (Capitalization), Section 3.3 (Authority), Section 4.1 (Authority) and Section 4.3 (Title to Shares).

"***Governing Documents***" means the legal document(s) by which any Person (other than an individual) establishes its legal existence or that govern its internal affairs. For example, the "Governing Documents" of a corporation are its certificate of incorporation and by-laws, the "Governing Documents" of a limited partnership are its limited partnership agreement and certificate of limited partnership and the "Governing Documents" of a limited liability company are its operating agreement and certificate of formation.

"***Governmental Entity***" means any United States or foreign (i) federal, state, local, municipal or other government; (ii) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal); or (iii) body exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

"***Group Companies***" means, collectively, the Company and each of its Subsidiaries and each of them, individually, a "***Group Company***".

"***Group Company Intellectual Property***" means any and all Intellectual Property Rights that are owned, purported to be owned, used, held for use or practiced by any Group Company, including all Group Company IP Registrations.

"***Group Company Owned Intellectual Property***" means any and all Intellectual Property Rights that are owned or purported to be owned by any Group Company.

"***Group Company IP Registrations***" has the meaning set forth in Section 3.12(a)(ii).

"***Guaranteed Obligations***" has the meaning set forth in Section 10.20(a).

"***Harmful Code***" means any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the Software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or damaging or destroying any data or file without the user's consent.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"***Income Tax***" means any Tax imposed on or determined with reference to gross or net income or profits or other similar Tax (including any franchise Taxes imposed in lieu of any income Tax).

"***Indebtedness***" means, as of any specific time, without duplication, with respect to the Group Companies: (i) indebtedness for borrowed money (including amounts due and owing under (x) the Credit Agreement and (y) the Premium Financing Arrangements; provided, that for purposes of calculating the Cash Purchase Price with respect to this clause (y), such amount shall be calculated net of the premiums paid with respect to such agreement, but in no event, shall such amount be less than zero); (ii) obligations for the deferred purchase price of assets, property,

services or securities (excluding any trade payables and accrued expenses arising in the ordinary course of business of the Group Companies); (iii) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument or debt security; (iv) leases treated as finance leases under the Accounting Principles; (v) all reimbursement or other obligations with respect to the letters of credit, bank guarantees, bankers' acceptances or other similar instruments, in each case, solely to the extent drawn; (vi) all breakage costs or fees with respect to any interest rate, currency swap, cap, forward or other similar arrangements designed to provide protection against fluctuations in any price or rate that are terminated at or prior to the Closing; (vii) all obligations and liabilities secured by any Lien (other than Permitted Liens) upon any property or assets of any Group Company; (viii) the aggregate amount (but not less than zero) of the accrued but unpaid Income Taxes of the Group Companies taking into account any applicable Transaction Tax Deduction to the extent not otherwise applied in calculating such accrual; (ix) earned and unpaid corporate executive bonus in an aggregate amount; (x) amounts accrued in respect of settlement obligations for any Actions net of offsetting recoveries reasonably expected to be received in connection with the settlement of such Actions in an amount not to exceed $1,000,000; (xi) amounts required to be contributed by Benihana, Inc., under the Rabbi Trust following Closing pursuant to Section 1(e) of the Rabbi Trust; (xii) all obligations of the type described in clauses (i) through (xi) above of any third-party, in each case, for which any Group Company is responsible or liable as obligor, guarantor or surety; and (xiii) for clauses (i) through (xii) above, all accrued interest, fees, costs, prepayment and other premiums, expenses, reimbursements, indemnities, breakage costs or penalties, if any, in connection with any of the foregoing. Notwithstanding the foregoing, "Indebtedness" shall not include any (1) intercompany obligations; (2) obligations under operating leases that are not required to be treated as finance leases under U.S. GAAP; (3) build to suit lease obligations, (4) unamortized deferred financing costs; (5) undrawn amounts under letters of credit or continuous or delayed draw instruments of credit; (6) obligations under any interest rate, currency or other hedging agreements (other than the breakage costs or fees described in clause (vi)); (7) amounts included as Seller Expenses; (8) amounts otherwise taken into account in the calculation of Net Working Capital; (9) obligations under surety bonds or similar instruments; (10) any gift card liability or other deferred revenue; (11) any obligations or liabilities for or related to Taxes (other than accrued and unpaid Income Taxes); (12) obligations or liabilities pursuant to the Credit Agreement for performance (rather than payment) or other contingent or conditional obligations (e.g., indemnification) not currently due; (13) obligations arising out of or related to items 3, 7 and 8 set forth on Section 3.17(b) of the Disclosure Schedules; (14) Losses, liabilities or obligations arising out of the W-2 Matter; and (15) any current or future (including both anticipated and unanticipated) obligations, liabilities or accruals for or related to capital expenditures, whether in respect of the Group Companies' restaurants in Conroe, TX, Temecula, CA, San Mateo, CA and Plantation, FL (such restaurants, the "***Development Locations***") or otherwise.

"***IT Systems***" means all computer systems, servers, network equipment and other computer hardware owned, leased or licensed by any Group Company.

"***Intellectual Property Rights***" means all right, title, and interests in and to the following: (i) trade names, corporate names, trademarks and service marks, domain names, social media handles, logos, slogans, trade dress, and other source identifiers, and registrations or applications to register any of the foregoing, together with the goodwill symbolized by any of the foregoing (collectively, "***Trademarks***"); (ii) patents, utility models and other statutory rights with respect to

the protection of inventions, and all applications, divisionals, continuations, continuations-in-part, and reissues for any of the foregoing (collectively, "***Patents***"); (iii) copyrights and other rights in works of authorship (whether registered or unregistered) and registrations and applications for registration of copyrights (collectively, "***Copyrights***"); (iv) trade secrets, including know-how, recipes, methods, processes, proprietary systems and methodologies, technical data, customer lists and any other information, in each case, to the extent any of the foregoing derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, "***Trade Secrets***"); (v) rights of attribution and integrity and other moral rights of an author; and (vi) rights in, arising out of, or associated with a person's name, voice, signature, photograph, or likeness, including rights of personality, privacy, and publicity and similar rights, in each case whether currently existing or hereafter developed or acquired, arising under statutory law, common law, or by contract, and whether or not perfected, registered or issued, including all applications, disclosures, registrations, issuances, renewals and extensions with respect thereto.

"***Latest Balance Sheet***" has the meaning set forth in Section 3.4(a).

"***Law***" means applicable laws, rules, regulations, codes, ordinances and orders of all Governmental Entities.

"***Lease Guarantees***" has the meaning set forth in Section 3.17(b).

"***Leasehold Improvements***" means all buildings, structures and similar improvements located on any Leased Real Property which are owned by any of the Group Companies, regardless of whether title to such buildings, structures or similar improvements are subject to reversion to the landlord or other third-party upon the expiration or termination of the Real Property Lease for such Leased Real Property.

"***Leased Real Property***" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by any Group Company.

"***Lien***" means any mortgage, deed of trust, pledge, security interest, lien, charge, hypothecation, option to purchase or lease or otherwise acquire any interest, conditional sales agreement, restriction, covenant, right of way, title defect, adverse claim of ownership or use, easement, encroachment or other similar encumbrance of any kind; *provided*, *however*, that (a) no license or other rights grant with respect to any Intellectual Property Rights shall, in and of itself, be deemed a "Lien" hereunder and (b) Liens securing the obligations of the Group Companies under the Credit Agreement and related agreements shall not be deemed a "Lien" hereunder.

"***Losses***" means any and all losses, liabilities, costs, expenses, claims, suits, Actions, damages, deficiencies, Taxes, interest, awards, judgments, penalties or fines.

"***Material Contracts***" has the meaning set forth in Section 3.6(a).

"***Material Supplier***" has the meaning set forth in Section 3.19.

"***Measuring Time***" means 12:01 a.m., New York City time, on the Closing Date.

"***Net Working Capital***" means (i) the aggregate value of those current assets of the Group Companies, on a consolidated basis, as of the Measuring Time that are included in the line item categories of current assets specifically identified in the Statement of Net Working Capital, less (ii) the aggregate value of (A) those current liabilities of the Group Companies, on a consolidated basis, as of the Measuring Time that are included in the line item categories of current liabilities specifically identified in the Statement of Net Working Capital and (B) all self-insurance claim liabilities, including current and non-current incurred but not reported claims, net of recoveries from third-party insurers, as determined by the Company's actuarial service provided as of the Closing Date, in each case, determined on a consolidated basis without duplication as of the Measuring Time and calculated in accordance with the Accounting Principles (including with respect to establishing levels of reserves). Notwithstanding the foregoing, "Net Working Capital" shall exclude any amounts related to (1) any and all Income Tax assets and liabilities and any and all deferred tax assets and liabilities established for financial accounting purposes to reflect timing differences between book and tax income and loss; (2) Cash and Cash Equivalents; (3) any intercompany payables or receivables, (4) Indebtedness (including accrued interest); (5) Seller Expenses; (6) RESERVED; (7) any and all current assets and current liabilities associated with the adoption of ASC 842; (8) earned and unpaid corporate executive bonus; (9) amounts accrued for potential or actual settlements or judgments in respect of any Actions; (10) any amounts related to insurance premium finance arrangements; or (11) Losses, liabilities or obligations arising out of the W-2 Matter. In determining whether any specific account or sub-account on the balance sheet is included or excluded from Net Working Capital, treatment will be consistent with the Statement of Net Working Capital.

"***Net Working Capital Adjustment***" means the amount equal to (i) the Net Working Capital; minus (ii) the Target Net Working Capital.

"***New Plans***" has the meaning set forth in Section 6.9(b).

"***Non-Party Affiliates***" has the meaning set forth in Section 10.18.

"***Outside Date***" has the meaning set forth in Section 9.1(d).

"***Parent***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Parent and Buyer Fundamental Representations***" means the representations and warranties contained in Section 5.1(a) (Organization), and Section 5.3 (Authority).

"***Parent Group Companies***" means, collectively, Parent and each of its Subsidiaries and each of them, individually, a "***Parent Group Company***".

"***Parent Preferred Stock***" means the preferred stock, par value $0.0001, of Parent.

"***Parties***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Payoff Letters***" means customary payoff letters from the Persons to whom any indebtedness for borrowed money with respect to the Group Companies is owed, signed by such

Persons, setting forth, among other things, (i) the amount required to pay off in full at the Closing all indebtedness for borrowed money owed to such Person, (ii) wire transfer instructions for the payment of such amount, (iii) a release of all Liens, if any, which such Person may hold on any member of the Group Companies or any of the assets of such parties, effective upon receipt of the payoff amount set forth therein (for purposes of this clause (iii), "Liens" shall include liens and encumbrances securing the Credit Agreement) and (iv) if applicable, provisions allowing Buyer to (x) backstop or cash collateralize any letters of credit provided in connection with such indebtedness at Closing or (y) otherwise make arrangements at Closing satisfactory to Buyer with respect to any such letters of credit.

"***Permits***" has the meaning set forth in Section 3.11.

"***Permitted Liens***" means (i) mechanic's, materialmen's, carriers', repairers' and other Liens arising or incurred in the ordinary course of business of the Group Companies for amounts that are not yet delinquent or are being contested in good faith by appropriate proceedings that are reflected as a liability in the Financial Statements; (ii) Liens for Taxes (A) not delinquent as of the Closing Date or (B) that are being contested in good faith by appropriate proceedings and for which adequate accruals or reserves have been established and are reflected as a liability in the Financial Statements for periods ending on or before the date of the Latest Balance Sheet and in the Group Companies' financial statements consistent with past practice since the date of the Latest Balance Sheet Date; (iii) Liens on real property (including easements, covenants, conditions, rights of way and similar restrictions) that do not materially interfere with Group Companies' present uses or occupancy of such real property; (iv) Liens granted to any lender at the Closing in connection with any financing by Buyer or its Affiliates of the transactions contemplated hereby; (v) zoning, building codes and other land use regulations imposed by Governmental Entities having jurisdiction over the real property regulating the use or occupancy of real property or the activities conducted thereon; (vi) Liens described in Schedule 1.1(c) attached hereto; (vii) any right, interest, Lien or title of a licensor, sublicensor, lessor or sublessor under any license, sublicense, lease, sublease or other similar agreement or in the property being leased or licensed not created or granted by any of the Group Companies; (viii) purchase money Liens and Liens securing rental payments under lease arrangements; (ix) other Liens which do not materially impair the use, value or marketability of the underlying asset; (x) with respect to the Leased Real Property, (1) the terms, conditions, and provisions of the Real Property Leases; (2) any Lien or other matter affecting title to the fee estate underlying such Leased Real Property; (3) Liens in favor of lessors, sublessors or licensors under the Real Property Leases or encumbering the interests of such lessors, sublessors or licensors (or holder of superior interests); (4) any right, title or interest of a lessor, sublessor or licensor under any of the Real Property Leases; and (5) all matters that may be shown on any title commitments and title policies, and any matter that would be reflected on a current, accurate ALTA/NSPS survey or physical inspection of any parcel of Leased Real Property; (xi) those Liens reflected in, reserved against or otherwise disclosed on the Financial Statements; (xii) all Liens created by, arising under, or existing as a result of, any Law; (xiii) all rights reserved to or vested in any Governmental Entity to control or regulate any asset or property in any manner and all Laws applicable to assets or properties; (xiv) easements, covenants, conditions, restrictions, charges, claims, rights of way, encroachments, defects or other minor imperfections of title and other similar restrictions whether or not of record; (xv) nonexclusive licenses of Intellectual Property Rights in the ordinary course of business; and (xvi) Liens that

have been placed by any developer, landlord or other third-party on property over which a Group Company has an easement, lease or license rights.

"***Personal Information***" means, in addition to any definition provided by a Group Company for any similar term (e.g., "personally identifiable information," "personal data" or "PII") in any Group Company privacy policy or other internal or public-facing statement, all information regarding or capable of being associated with any individual or device, including: (i) information that identifies, could be used to identify or is otherwise identifiable with an individual, including name, physical address, telephone number, email address, financial account number, government-issued identifier (including Social Security number and driver's license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations, and marital or other status, photograph, face geometry, or biometric information, and any other data used or intended to be used to identify, contact or precisely locate any individual or device; (ii) any data regarding an individual's activities online or on a mobile or other application (e.g., searches conducted, web pages or content visited or viewed); and (iii) Internet Protocol addresses or other persistent identifiers. Personal Information may relate to any individual, including a current, prospective or former customer or employee of any Person. Personal Information includes information in any form, including paper, electronic and other forms.

"***Person***" means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture, association or other similar entity, whether or not a legal entity.

"***Pre-Closing Tax Period***" means a taxable period ending on or before the Closing Date.

"***Preferred Stock Commitment Letter***" has the meaning set forth in Section 5.11.

"***Preferred Stock Financing***" has the meaning set forth in Section 5.11.

"***Preferred Stock Financing Sources***" means the Persons that have committed to provide or arrange the Preferred Stock Financing in connection with the transactions contemplated hereby, together with their respective Affiliates and the respective officers, directors, employees, attorneys, agents, representatives and permitted successors and assigns of each of such Person or Affiliate.

"***Premium Financing Arrangements***" means (a) that certain Premium Finance Agreement Promissory Note, dated as of September 1, 2023, made by Benihana, Inc. for the benefit of AFCO Credit Corporation, (b) that certain Premium Finance Agreement Promissory Note, dated as of October 9, 2023, made by Benihana, Inc. for the benefit of AFCO Credit Corporation, and (c) that certain Premium Finance Agreement, dated as of August 14, 2023, made by Benihana, Inc. for the benefit of AFCO Credit Corporation.

"***Privacy Policies***" has the meaning set forth in Section 3.12(b)(iii).

"***Process***" or "***Processing***" means, with respect to Personal Information, the use, collection, access, storage, recording, organization, adaption, alteration, transfer, retrieval, disclosure, dissemination or combination of such Personal Information.

"***Proposed Closing Date Calculations***" has the meaning set forth in Section 2.3(b)(i).

"***Protected Communications***" has the meaning set forth in Section 10.17(b).

"***R&W Insurance Costs***" has the meaning set forth in Section 10.4.

"***R&W Insurance Policy***" means collectively (i) the buyer-side representations and warranties insurance policy issued by Liberty Surplus Insurance Corporation to Buyer and (ii) the excess liability insurance policy issued by Arch Reinsurance Ltd. to Buyer, attached hereto as Exhibit B-1 and Exhibit B-2, respectively.

"***Rabbi Trust***" means the Benihana, Inc. Executive Retirement Savings Plan Trust Agreement, dated April 27, 2010.

"***Real Property Lease***" means all leases, subleases, licenses, concessions and other agreements pursuant to which any Group Company holds any Leased Real Property.

"***Regulatory Approvals***" has the meaning set forth in Section 6.4(a).

"***Related Party***" has the meaning set forth in Section 3.18.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Breach***" means any actual: (a) unauthorized or unlawful access to, or unauthorized alteration, destruction, disclosure, loss, Processing, or use of, Personal Information and any Group Company's confidential information; (b) unauthorized use of, or unauthorized access to IT Systems; or (c) inability to Process Personal Information and Group Company's confidential information, or access or use IT Systems due to Harmful Code, ransomware, or any malicious attack, exfiltration, or exploit of such Personal Information and any Group Company's confidential information, or IT Systems.

"***Seller***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Seller Counsel***" has the meaning set forth in Section 10.17.

"***Seller Expenses***" means, without duplication, the collective amount payable by the Group Companies for all out-of-pocket costs and expenses that are incurred in connection with the transactions contemplated by this Agreement, in each case, solely to the extent required to be paid or reimbursed by any of the Group Companies, including (i) the amount of any investment banking, accounting, attorney or other professional fees, including the fees and expenses of Seller Counsel (as defined in Section 10.17) and Piper Sandler & Co.; (ii) the amount of any "single-trigger" change of control payments or similar amounts payable by the Group Companies that are not paid by a Group Company at or prior to Closing or included as an accrual in the computation of Net Working Capital or Indebtedness and payable solely as a result of the consummation of the transactions contemplated herein (but excluding any "double trigger" payments or any amount payable as a result of any actions taken by Parent, Buyer or a Group Company on or after the Closing); (iii) the amount of all sale, "stay-around," retention, change of control or similar bonuses

or payments payable to current or former employees, directors or consultants of any Group Company that are not paid by a Group Company at or prior to Closing or included as an accrual in the computation of Net Working Capital or Indebtedness and payable solely as a result of the consummation of the transactions contemplated herein (but excluding any "double trigger" payments or any amount payable as a result of any actions taken by Parent, Buyer or a Group Company on or after the Closing); and (iv) the employer portion of any payroll taxes due in connection with the payments described in clauses (ii) and (iii); *provided*, that "Seller Expenses" shall not include (1) any amount that is included in the calculation of Indebtedness , Cash and Cash Equivalents or Net Working Capital; (2) 50% of any filing fees (if any) under the HSR Act and all non-U.S. Laws similar to the HSR Act; (3) 50% of Transfer Taxes and fees referenced in Section 6.13; (4) 50% of the policy premium with respect to the Tail Policy referenced in Section 6.7(b); (5) 50% of any fees or expenses of the Escrow Agent in connection with the Escrow Agreement; or (6) Losses, liabilities or obligations arising out of the W-2 Matter.

"***Seller Released Claims***" has the meaning set forth in Section 6.17.

"***Seller Released Parties***" has the meaning set forth in Section 6.17.

"***Seller Tax Refund***" has the meaning set forth in Section 6.11(b).

"***Shares***" has the meaning set forth in the recitals to this Agreement.

"***SNDAs***" means all subordination, nondisturbance, and/or attornment agreements for each Real Property Lease, to the extent in existence (including all amendments and modifications with respect thereto).

"***Software***" means all (i) computer programs, including all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) databases and compilations of data, including all data and collections of data, whether machine readable or otherwise; and (iii) documentation, including user manuals and other training documentation, descriptions, flow-charts, specifications, schema, and architecture related to any of the foregoing.

"***Statement of Net Working Capital***" means the statement of Net Working Capital determined as of January 28, 2024, and attached as Exhibit A hereto.

"***Straddle Period***" means a taxable period that includes (but does not end on) the Closing Date.

"***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) 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 such Person or one or more of the other Subsidiaries of such Person or a combination thereof or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation)

if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be a, or control any, managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"***Tail Policy***" has the meaning set forth in Section 6.7(b).

"***Target Net Working Capital***" means negative $30,821,000.

"***Tax***" means any federal, state, local or foreign income gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, withholding, payroll, employment, social security, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other tax, fee, assessment or charge of any kind whatsoever in the nature of a tax, including escheat and unclaimed property (including any amounts resulting from the failure to file any Tax Return), including any interest, penalties or additions to tax in respect of the foregoing.

"***Tax Claim***" has the meaning set forth in Section 6.11(d)(i).

"***Tax Return***" means any return, declaration, report, election, disclosure, claim for refund or information return or statement relating to Taxes filed or required to be filed with any Governmental Entity, including any schedule or attachment thereto, and including any amendment or supplement thereof.

"***Transaction Financing***" has the meaning set forth in Section 5.11.

"***Transaction Financing Sources***" has the meaning set forth in Section 6.16(a).

"***Transaction Tax Deductions***" means, to the extent deductible by the Group Companies as determined pursuant to Section 6.11, for Income Tax purposes, without duplication, the aggregate amount of: (i) the Seller Expenses; (ii) all success-based fees of professionals (including investment bankers and other consultants and advisors) paid by or on behalf of any Group Company in connection with this Agreement to the extent that such amounts are paid prior to Closing or otherwise are taken into account in the computation of Net Working Capital or Indebtedness; (iii) the capitalized financing costs and expenses and any prepayment premium resulting from the satisfaction at the Closing of Closing Date Indebtedness; and (iv) all sale, "stay-around," retention, change of control or similar bonuses or payments payable to current or former employees, directors or consultants of any Group Company contingent upon the Closing, together with the employer portion of any payroll taxes imposed with respect to the foregoing, in each case either paid by a Group Company at or prior to Closing or included as an accrual in the computation of Net Working Capital, Indebtedness or Unpaid Seller Expenses.

"***Transfer Agent***" means Continental Stock Transfer & Trust Company.

"***Transfer Taxes***" means all sales (including bulk sales), use, value added, transfer, conveyance, stamp, registration, documentary, excise, real property transfer, recording, license or similar Taxes and fees imposed by any Governmental Entity arising out of or in connection with the transactions contemplated by this Agreement.

"***Treasury Regulations***" means the regulations promulgated under the Code by the United States Department of the Treasury.

"***Unpaid Seller Expenses***" means the amount of Seller Expenses incurred and unpaid as of immediately prior to the Closing.

"***U.S. GAAP***" means accounting principles generally accepted in the United States of America; *provided*, that in the case of the 2022 Audited Financial Statements, "U.S. GAAP" shall disregard the adoption of ASC 842.

"***WARN Act***" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local Law.

"***Willful Breach***" means, with respect to a Party, a material breach by such Party that is a consequence of an act or omission knowingly undertaken or knowingly omitted by such Party with the actual knowledge that such act or omission would cause a material breach of this Agreement.

"***W-2 Indemnity Escrow Account***" has the meaning set forth in Section 2.3(a)(ii).

"***W-2 Indemnity Escrow Amount***" has the meaning set forth in Section 2.3(a)(ii).

"***W-2 Indemnity Escrow Funds***" means, at any time, the portion of the W-2 Indemnity Escrow Amount then remaining in the W-2 Indemnity Escrow Account plus all interest and income then held in the W-2 Indemnity Escrow Account.

"***W-2 Matter***" means the facts and circumstances underlying the civil penalty notice from IRS, dated February 12, 2024, addressed to Benihana National Corp. and Benihana of Tokyo.

ARTICLE 2
CLOSING; PURCHASE

Section 2.1 Closing of the Transaction. The consummation of the sale, assignment, transfer and delivery by Seller to Buyer, and the purchase by Buyer from Seller, of all of the Shares as contemplated hereby (the "***Closing***") shall take place at 10:00 a.m., New York City time, no later than the third (3rd) Business Day after satisfaction (or waiver) of the conditions set forth in Article 7 (not including conditions which by their terms may only be satisfied at the Closing or on the Closing Date, but subject to the satisfaction (or waiver by the Party entitled to waive) of such conditions at the Closing or on the Closing Date), remotely via the electronic exchange of documents and signatures, unless another time, date or place is agreed to in writing by the Parties. The "***Closing Date***" shall be the date on which the Closing is consummated.

Section 2.2 Share Purchase. At the Closing, subject to the terms and conditions set forth herein, Buyer shall purchase from Seller, and Seller shall sell, assign, transfer and deliver to Buyer, all of the Shares, free and clear of all Liens, other than Liens arising under applicable state and federal securities Laws, and any transfer restrictions as may be set forth in the Company's Governing Documents. Subject to the terms and conditions set forth herein, the purchase price to be paid or issued by or on behalf of Buyer to Seller as consideration for all of the Shares shall consist of the Cash Purchase Price.

Section 2.3 Cash Purchase Price.

(a) Estimated Cash Purchase Price. No later than three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer a written statement (the "***Estimated Closing Statement***"), prepared in accordance with Section 2.3(d), setting forth the Company's good-faith estimate of the Cash Purchase Price (the "***Estimated Cash Purchase Price***") pursuant to which the Company shall use, for purposes of calculation of such estimate, the Base Cash Consideration, and Seller's good-faith estimates reasonably calculated to reflect the actual amounts of the following: (i) Closing Date Indebtedness; (ii) Unpaid Seller Expenses; (iii) Cash and Cash Equivalents; and (iv) the Net Working Capital Adjustment. Prior to the Closing, Buyer shall have the right to review and provide feedback to the Seller with respect to the Estimated Closing Statement and the Seller will reasonably consider such feedback and, to the extent Seller agrees with such feedback, modify the Estimated Closing Statement accordingly. Prior to the Closing, Buyer may ask questions of Seller (and Seller shall provide answers or cause to be delivered to Buyer answers promptly after receipt of Buyer's questions) regarding the Estimated Closing Statement and calculation of Estimated Cash Purchase Price including with regard to calculation methodology and judgments utilized in the preparation thereof. At Buyer's request, Seller shall provide or cause to be delivered to Buyer reasonable supporting documentations that are under control of Seller or the Group Companies that reasonably relate to the Estimated Closing Statement and calculation of Estimated Cash Purchase Price. Notwithstanding anything to the contrary herein, in no event shall any rights granted to Buyer in this Section 2.3(a) with respect to information or supporting documentation be applied to defer or delay the Closing other than in the event of Seller's Willful Breach of this Section 2.3(a) with respect to information or supporting documentation in Seller's possession. At the Closing, Buyer shall pay, or shall cause to be paid, in cash by wire transfer of immediately available funds, the following:

(i) $2,000,000 of cash (such amount, the "***Adjustment Escrow Amount***") shall be deposited into an adjustment escrow account (the "***Adjustment Escrow Account***"), which shall be established pursuant to an escrow agreement substantially in the form of Exhibit C attached hereto (the "***Escrow Agreement***"), which Escrow Agreement shall be entered into on the Closing Date among Seller, Buyer and U.S. Bank, N.A. (the "***Escrow Agent***") ;

(ii) $951,720 of cash (such amount, the "***W-2 Indemnity Escrow Amount***") shall be deposited into an indemnity escrow account (the "***W-2 Indemnity Escrow Account***"), which shall be established pursuant to the Escrow Agreement;

(iii) an amount shall be paid to Seller (into one or more accounts designated by Seller) equal to the Estimated Cash Purchase Price, minus the Adjustment Escrow Amount, minus the W-2 Indemnity Escrow Amount minus 50% of the R&W Insurance Costs;

(iv) an amount shall be paid in respect of the Unpaid Seller Expenses in the amounts set forth on the Estimated Closing Statement delivered hereunder and pursuant to wire instructions provided to Buyer by Seller prior to the Closing;

(v) an amount shall be paid in respect of the Closing Date Indebtedness, solely to the extent a Payoff Letter is delivered in connection therewith, to the accounts and in the amounts set forth in the applicable Payoff Letter; and

(vi) the R&W Insurance Costs, to the extent unpaid at such time, to the account of the Persons to which the R&W Insurance Costs are owed pursuant to an invoice and wire instructions provided by such Persons to Buyer, copies of which were forwarded to Seller by Buyer prior to the Closing.

(b) Determination of Final Cash Purchase Price.

(i) As soon as practicable, but no later than ninety (90) days after the Closing Date, Buyer shall prepare and deliver to Seller proposed good-faith estimates of (A) the Net Working Capital, (B) Cash and Cash Equivalents, (C) Closing Date Indebtedness, (D) Unpaid Seller Expenses and (E) the Cash Purchase Price based thereon (collectively, the "***Proposed Closing Date Calculations***"), and setting forth in reasonable detail the basis for any deviation from the Estimated Closing Statement.

(ii) (A) If Seller does not give written notice of any dispute (a "***Cash Purchase Price Dispute Notice***") to Buyer within forty-five (45) days of receiving the Proposed Closing Date Calculations, Seller agrees that the Proposed Closing Date Calculations shall be deemed to set forth the final Net Working Capital, Cash and Cash Equivalents, Closing Date Indebtedness, Unpaid Seller Expenses and Cash Purchase Price, in each case, for purposes of determining the Actual Adjustment. Prior to the end of such forty-five (45)-day period, Seller may (i) ask questions of Buyer (and Buyer shall provide answers or cause to be delivered to Seller answers promptly after receipt of Seller's questions) regarding the Proposed Closing Date Calculations including with regard to calculation methodology and judgments utilized in the preparation thereof, and (ii) request for review (and Buyer shall provide or cause to be delivered to Seller promptly after receipt of Seller's request) all materials that are under control of Buyer or the Group Companies that reasonably relate to the Proposed Closing Date Calculations and then either accept the Proposed Closing Date Calculations by delivering written notice to that effect to Buyer, in which case the Cash Purchase Price will be finally determined when such notice is given, or deliver a Cash Purchase Price Dispute Notice. To the extent Seller makes any request for materials or asks any questions, such forty-five (45)-day period for Seller review shall be tolled until Buyer provides substantive response to all requests for materials and questions. If Seller delivers a Cash Purchase Price Dispute Notice to Buyer within such forty-five (45)-day period (as it may be extended in accordance herewith), Buyer and Seller shall use commercially reasonable efforts to resolve the dispute during the thirty (30)-day period commencing on the date Buyer receives the Cash Purchase Price Dispute Notice from Seller. Any item set forth in the Proposed Closing Date Calculations and not objected to in the Cash Purchase Price Dispute Notice shall be final and binding on the Parties. If Seller and Buyer do not agree upon a final resolution with respect to any disputed items within such thirty (30)-day period, then the remaining items in dispute shall be submitted immediately to the dispute resolution group of Marcum LLP, or if it refuses such submission, the dispute resolution group of a nationally recognized, independent accounting firm reasonably agreed upon by Buyer and Seller (such accounting firm, the "***Accounting Firm***"), the determination of such accounting firm being conclusive and binding on the Parties and shall not be subject to court review or otherwise appealable. The Accounting Firm shall be instructed, and Buyer and Seller shall (and Buyer shall cause the Group Companies to) use commercially reasonable efforts to cause the Accounting Firm, to render a determination of the applicable dispute within forty-five (45) days after referral of the matter to such Accounting Firm, which determination must be in writing and must set forth, in reasonable detail, the basis

therefor. In a potential dispute resolution procedure pursuant to this Section 2.3(b), all prior discussions related thereto shall, unless otherwise agreed by Seller and Buyer, be governed by Rule 408 of the Federal Rules of Evidence and no Party may discuss, use or rely upon the other Party's conduct or statements during such dispute resolution or in any communication with the Accounting Firm. In connection with the dispute resolution procedures set forth in this Section 2.3(b), Buyer and Seller agree to execute, if requested by the Accounting Firm, an engagement letter in customary form that is reasonably satisfactory to each of Buyer and Seller; *provided*, that, in the event that either Buyer or Seller refuses to execute such an engagement letter or otherwise fails to cooperate with the other Party and the Accounting Firm in accordance with the dispute resolution procedures set forth in this Section 2.3(b) (as reasonably determined by the other Party), the other Party shall be permitted to unilaterally engage the Accounting Firm to render a determination of the applicable dispute in accordance with the procedures set forth in this Section 2.3(b) and the Accounting Firm shall be permitted to rely on any such unilateral engagement to the same extent as if the Accounting Firm were mutually engaged by Buyer and Seller, and Buyer and Seller agree that in the event of any such engagement, absent manifest arithmetical error, the determination of the Accounting Firm with respect to such dispute shall be conclusive and binding on the Parties and shall not be subject to court review or otherwise appealable.

(iii) Within fifteen (15) days after the engagement of the Accounting Firm, Seller and Buyer shall present their respective positions with respect to the items set forth in the Cash Purchase Price Dispute Notice that remain in dispute in the form of a written report, a copy of which shall be delivered to the other Party, and no *ex parte* conferences, oral examinations, testimony, depositions, discovery or other form of evidence gathering or hearings shall be conducted or allowed; *provided*, that, at the Accounting Firm's request, or as mutually agreed by Seller and Buyer, Seller and Buyer may meet with the Accounting Firm so long as representatives of both Seller and Buyer are present. The Accounting Firm's determination shall be instructed to be based solely on the written reports submitted to the Accounting Firm by Seller and Buyer and oral submissions by Seller and Buyer at meetings held in compliance with the prior sentence (i.e., not on independent review) and on the definitions and other terms included herein; *provided*, that, in resolving a disputed item, the Accounting Firm may not assign a value to any particular item greater than the greatest value for such item or less than the smallest value for such item, in each case, claimed by Buyer or Seller in the written reports presented to the Accounting Firm. Absent manifest arithmetical error, the Accounting Firm's decision with respect to the matters in dispute shall be final and binding on the Parties and shall not be subject to court review or otherwise appealable.

(iv) The terms of appointment and engagement of the Accounting Firm shall be as agreed upon between Seller and Buyer, and any associated engagement fees shall be initially borne fifty percent (50%) by Seller and fifty percent (50%) by Buyer; *provided*, that such fees shall ultimately be borne as set forth below. All other costs and expenses incurred by the Parties in connection with resolving any dispute hereunder before the Accounting Firm shall be borne by the Party incurring such cost and expense. The fees and disbursements of the Accounting Firm shall ultimately be allocated between Seller and Buyer in the same proportion that the aggregate amount of the disputed items submitted to the Accounting Firm that are unsuccessfully disputed by each such Party (as finally determined by the Accounting Firm) bears to the total amount of such disputed items so submitted. The Proposed Closing Date Calculations shall be revised as appropriate to reflect the resolution of any objections thereto pursuant to this Section

2.3(b) and, as so revised, such Proposed Closing Date Calculations shall be deemed to set forth the final Net Working Capital, Cash and Cash Equivalents, Closing Date Indebtedness, Unpaid Seller Expenses and Cash Purchase Price, in each case, for all purposes hereunder (including the determination of the Actual Adjustment).

(v) Buyer shall, and shall cause the Group Companies to, make their financial records, the Group Companies' books and records and the working papers of Buyer's accountants prepared in connection with preparation of the Proposed Closing Date Calculations available to Seller and its accountants and other representatives (and Seller and its accountants and other representatives shall be permitted to make copies as they see reasonably necessary) at reasonable times at any time during the review by Seller of, and the resolution of any objections with respect to, the Proposed Closing Date Calculations. At the request of Seller, the Company shall permit any Person who is employed by the Group Companies or their Affiliates after the Closing to advise and/or assist Seller in its review of the Proposed Closing Date Calculations and any objections or disputes with respect thereto.

(vi) The Parties agree that the procedures set forth in this Section 2.3(b) for resolving disputes with respect to the Proposed Closing Date Calculations shall be the sole and exclusive method for resolving any such disputes; *provided*, that this provision shall not prohibit any Party from instituting litigation to enforce any decision by the Accounting Firm with respect to matters in dispute pursuant to this Section 2.3(b), or to compel any Party to submit any dispute arising in connection with this Section 2.3(b) to the Accounting Firm pursuant to and in accordance with the terms and conditions of this Section 2.3(b), in any court or other tribunal of competent jurisdiction in accordance with Section 10.15. It is the intent of the Parties to have any final determination of disputes with respect to the Proposed Closing Date Calculations by the Accounting Firm proceed in an expeditious manner; *provided*, that any deadline or time period contained herein may be extended or modified by the written agreement of Buyer and Seller, and Buyer and Seller agree that the failure of the Accounting Firm to strictly conform to any deadline or time period contained herein shall not be a basis for seeking to overturn any determination rendered by the Accounting Firm which otherwise conforms to the terms of this Section 2.3(b).

(c) Adjustment to Estimated Cash Purchase Price.

(i) If the Actual Adjustment is a positive amount, then within three (3) Business Days after the date on which the Cash Purchase Price is finally determined pursuant to this Section 2.3, Buyer shall, or shall cause a Group Company to, pay to Seller an aggregate amount equal to the lesser of (A) such positive amount and (B) an amount equal to the then-remaining Adjustment Escrow Funds, by wire transfer or delivery of immediately available funds. For the avoidance of doubt, the foregoing obligation of Buyer in respect of a positive Actual Adjustment (and Buyer's obligations under Section 2.3(c)(iii)) shall be the sole and exclusive remedy available to Seller for any positive Actual Adjustment, and Buyer shall not have any other liabilities or obligations under this Agreement for any positive Actual Adjustment in excess of an amount equal to the then-remaining Adjustment Escrow Funds.

(ii) If the Actual Adjustment is a negative amount, then within three (3) Business Days after the date on which the Cash Purchase Price is finally determined pursuant to this Section 2.3, Buyer and Seller shall deliver joint written instructions to the Escrow Agent

instructing the Escrow Agent to deliver to Buyer from the Adjustment Escrow Account an amount equal to the absolute value of such negative amount (*provided*, that if the absolute value of such negative amount is greater than the then-remaining Adjustment Escrow Funds, then such joint written instructions will instruct the Escrow Agent to deliver to Buyer the then-remaining Adjustment Escrow Funds). For the avoidance of doubt, recovery from the Adjustment Escrow Account shall be the sole and exclusive remedy available to Buyer and its Affiliates for any negative Actual Adjustment, and Seller shall not have any liability or obligation under this Section 2.3 or otherwise for the absolute value of any negative Actual Adjustment in excess of the then-remaining Adjustment Escrow Funds.

(iii) Within three (3) Business Days after the date on which the Cash Purchase Price is finally determined pursuant to this Section 2.3 (and concurrent with the payments made or the instructions delivered pursuant to Section 2.3(c)(i) or 2.3(c)(ii), as applicable), Buyer and Seller shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver to Seller any Adjustment Escrow Funds not distributed to Buyer pursuant to Section 2.3(c)(ii).

(iv) Any amounts that become payable pursuant to this Section 2.3(c) will constitute an adjustment to the Cash Purchase Price for all purposes.

(d) Net Working Capital Principles. The Estimated Closing Statement, the Proposed Closing Date Calculations, the Actual Adjustment and the determinations and calculations contained therein shall be prepared and calculated on a consolidated basis for the Group Companies in accordance with the Accounting Principles except that such statements, calculations and determinations shall (i) not include any purchase accounting or other adjustment arising out of the consummation of the transactions contemplated by this Agreement; (ii) be based information available to the Parties as of the date on which Buyer delivers the Proposed Closing Date Calculations to Seller; and (iii) be calculated in the ordinary course of business of the Group Companies, consistent with the methodologies utilized by the Company in its preparation of a year-end balance sheet.

Section 2.4 Withholding Rights. Buyer and the Company shall be entitled to deduct and withhold from any amount payable to any Person pursuant to this Agreement such amounts as they are required to deduct or withhold with respect to the making of such payment under any applicable Tax Law. If Buyer or the Company, as applicable, determines that any deduction or withholding is required under any applicable Tax Law, Buyer or the Company, as applicable, shall (a) promptly after such determination (but in no event less than three (3) Business Days prior to the date of such payment), notify Seller of any such deduction or withholding (including the amount of and reason for withholding), based on the Tax forms provided to it as of such time (other than backup withholding or withhold of employment Taxes), (b) consult with Seller in good faith to determine whether such deduction or withholding is required under any applicable Tax Law, and (c) cooperate in good faith with Seller to minimize the amount of any applicable deduction or withholding (including providing reasonable opportunity for Seller to provide necessary Tax forms, prior to deducting or withholding any such amounts). Amounts so deducted and withheld shall be treated for all purposes of this Agreement as

having been paid to the Person in respect of which Buyer or the Company, as the case may be, made such deduction or withholding.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure schedules accompanying this Agreement (the "***Disclosure Schedules***"), the Company and Seller represent and warrant to Buyer as of the date hereof and as of the Closing as follows:

Section 3.1 Organization and Qualification.

(a) The Company is a corporation, duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Subsidiary of the Company is duly organized, validly existing and in good standing (or the equivalent thereof) (if applicable) under the Laws of its respective jurisdiction of formation, except for such failures that would not, individually or in the aggregate, be material to the Group Companies, taken as a whole. Each Group Company has the requisite corporate (or the equivalent thereof) power and authority to own, lease and operate its assets and properties and to carry on its businesses in which it is engaged, except for such failures that would not, individually or in the aggregate, be material to the Group Companies, taken as a whole.

(b) Each Group Company is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof) (if applicable) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of the business conducted by it, makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, be material to the Group Companies, taken as a whole.

Section 3.2 Capitalization.

(a) The name, state of organization, and authorized and outstanding capital of each Group Company, and the owners of such outstanding capital, is set forth on Section 3.2(a) of the Disclosure Schedules. The authorized capital stock of the Company consists of one thousand (1,000) shares of common stock $0.01 per share par value, of which two hundred (200) shares of common stock are issued and outstanding. All of the issued and outstanding equity securities of the Group Companies are duly authorized, validly issued, fully paid and nonassessable and have not been issued (i) in violation of any agreement, arrangement, or commitment to which Seller or the Company is a party or is subject to or (ii) in violation of any preemptive rights, rights of first refusal or similar rights or applicable Laws.

(b) All of the issued and outstanding shares of capital stock of the Company are held by Seller and are owned directly by Seller free and clear of all Liens, other than transfer restrictions arising under applicable state and federal securities Laws or as may be set forth in the Company's Governing Documents, and are not subject to any preemptive right or right of first refusal created by statute, the articles of incorporation or bylaws or other equivalent organizational documents, as applicable, of the Company or any contract to which the Company is a party or by which it is bound.

(c) All of the issued and outstanding shares of capital stock or limited liability interests of the Company's Subsidiaries are held directly or indirectly by the Company and are owned directly or indirectly by the Company free and clear of all Liens, other than transfer restrictions arising under applicable state and federal securities Laws or as may be set forth in the Governing Documents of the applicable Subsidiary of the Company, and are not subject to any preemptive right or right of first refusal created by statute, the articles of incorporation or bylaws or other equivalent Governing Documents, as applicable, of the Subsidiaries of the Company or any contract to which any of the Subsidiaries of the Company is a party or by which it is bound.

(d) There are no other equity or voting securities or interests authorized, issued, reserved for issuance or outstanding and no outstanding or authorized options, warrants, restricted stock units, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts or other rights (including any preemptive rights) or other contracts or commitments that would require any of the Group Companies to issue, sell or otherwise cause to become outstanding any of its capital stock or any other analogous rights, interests or any other arrangements, commitments or agreements of any character relating to dividend rights or to the sale, issuance, transfer, delivery or sale or the acquisition, repurchase or redemption of shares of capital stock or voting of, or the granting of rights to acquire, any equity securities of, or voting interest in, any of the Group Companies, or any securities or other instruments convertible into, exchangeable for or evidencing the right to purchase any equity securities of any of the Group Companies.

(e) There are no equity appreciation, phantom equity, profit participation or other similar rights in respect of capital stock, or other equity interests in, of the Group Companies.

(f) None of the Group Companies is a party to, and there are no, voting trusts, proxies, rights of first refusal, rights of first offer or other agreements or understandings or Liens, other than Liens arising under applicable state and federal securities Laws, with respect to any shares of capital stock of, or other equity or voting interests in, any of the Group Companies, that will survive the Closing Date.

(g) None of the Group Companies has any authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or convertible into, exchangeable for or evidencing the right to subscribe for or acquire securities having the right to vote) with the stockholders of the Group Companies on any matter. There are no contracts, arrangements or understandings to which any of the Group Companies is a party or by which it is bound to (x) repurchase, redeem or otherwise acquire any shares of capital stock of, or other equity or voting interest in, any of the Group Companies or (y) vote or dispose of any shares of capital stock of, or other equity or voting interest in, any of the Group Companies.

(h) Except as set forth on Section 3.2(h) of the Disclosure Schedules, no Group Company owns, directly or indirectly, any equity, voting or similar interest in, or any interest convertible into or exchangeable or exercisable for, at any time, any equity, voting or similar interest in, any Person (other than another Group Company).

Section 3.3 **Authority**. The Company has the requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Document to which the Company is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions

contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which the Company is or will be a party and the performance by the Company of its obligations hereunder and thereunder have been (and the Ancillary Documents to which the Company is or will be a party will be at or prior to the Closing) duly authorized by all necessary corporate action on the part of the Company and no other proceeding (including by its equityholders) on the part of the Company is necessary to authorize the execution, delivery or performance of this Agreement and each of the Ancillary Documents to which the Company is or will be a party or to consummate the transactions contemplated hereby or thereby. No vote of the Company's equityholders is required to approve this Agreement (and the Ancillary Documents to which the Company is or will be a party) or for the Company to consummate the transactions contemplated hereby or thereby. This Agreement has been (and the Ancillary Documents to which the Company is or will be a party will be at or prior to the Closing) duly executed and delivered by the Company and constitutes (or will constitute when executed) a valid, legal and binding agreement of the Company (assuming that this Agreement has been, and the Ancillary Documents to which the Company is or will be a party will be, duly and validly authorized, executed and delivered by the other Persons party thereto at or prior to the Closing), enforceable against the Company in accordance with their respective terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting generally the enforcement of creditors' rights and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought (clauses (i) and (ii), collectively, the "***Enforceability Exception***").

Section 3.4 Financial Statements.

(a) Attached hereto as Section 3.4(a) of the Disclosure Schedules are the following financial statements (such financial statements, the "***Financial Statements***"): (i) the audited consolidated balance sheet of the Group Companies for the fiscal year ended on March 26, 2023 (the "***Balance Sheet***"), and the related statement of operations, statement of stockholder's equity and statement of cash flows, including the notes related thereto (such financial statements with respect to the 2023 fiscal year, the "***2023 Audited Financial Statements***"); (ii) the audited consolidated balance sheet of the Group Companies for the fiscal year ended on March 27, 2022, and the related statement of operations, statement of stockholder's equity and statement of cash flows, including the notes related thereto (such financial statement with respect to the 2022 fiscal year, the "***2022 Audited Financial Statements***", together with the 2023 Audited Financial Statements, the "***Audited Financial Statements***"); and (iii) the unaudited consolidated balance sheets of the Group Companies for the period of eleven fiscal periods ended on January 29, 2023 and January 28, 2024 (the latter, the "***Latest Balance Sheet***"), and the related unaudited statements of income and cash flows of the Group Companies for such periods.

(b) Except as set forth on Section 3.4(b) of the Disclosure Schedules, the Financial Statements (i) have been prepared from the books and records of the Group Companies and in accordance with U.S. GAAP, applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto and subject, in the case of unaudited Financial Statements, to the absence of notes required by U.S. GAAP and normal and recurring year-end adjustments (none of which, individually or in the aggregate, are material), and (ii) fairly present, in all material respects, the consolidated financial condition and results of operations of the Group Companies as of the dates thereof and for the periods therein referred to (subject, in the

case of unaudited Financial Statements, to the absence of notes required by U.S. GAAP and normal and recurring year-end adjustments).

(c) Except as and to the extent reflected on the Latest Balance Sheet or Section 3.4(c) of the Disclosure Schedules, no Group Company has any material liabilities that are of a nature required to be set forth on a consolidated balance sheet of the Group Companies in accordance with U.S. GAAP, other than liabilities (i) that have arisen after the date of the Latest Balance Sheet in the ordinary course of business of the Group Companies; (ii) that are executory under the terms of any contract entered into in the ordinary course of business of the Group Companies or otherwise discharged or paid in full in the ordinary course of business of the Group Companies; (iii) that are incurred in connection with this Agreement, the transactions contemplated by this Agreement, or any matters set forth in the Disclosure Schedules; (iv) that constitute Indebtedness; and (v) incurred in connection with any action taken by Seller, any Group Company or their respective Affiliates that are contemplated, permitted or required under Section 6.1 or at Buyer's request or with Buyer's consent, or the failure to take any action by Seller, any Group Company or their respective Affiliates if that action is prohibited by Section 6.1 and Buyer either did not consent to such action or withheld, delayed or conditioned its consent.

(d) The Group Companies (i) maintain financial books and records that are accurate in all material respects and accurately reflect all material dealings and transactions in respect of the business, revenues, expenses, assets, liabilities and affairs of the Group Companies; and (ii) have established and maintains a system of internal controls over financial reporting designed to provide reasonable assurance (A) regarding the reliability of the Company's financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and (B) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the Company's financial statements.

(e) For the past three (3) years, no Group Company has, nor, to the Company's knowledge, has any current or former employee of any Group Company, identified or been made aware of any fraud that involves any Group Company's management or other current or former employee of any Group Company who have a role in the preparation of financial statements or the internal accounting controls utilized by any of the Group Companies, or any fraud claim or allegation regarding any of the foregoing.

(f) The accounts receivable reflected on the Latest Balance Sheet and the accounts receivable arising after the date thereof (i) have arisen from bona fide transactions entered into by the Group Companies involving the sale of goods or the rendering of services in the ordinary course of business; (ii) constitute only valid, undisputed claims of the Group Companies not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business; and (iii) subject to a reserve for bad debts shown on the Latest Balance Sheet or, with respect to accounts receivable arising after the date of the Latest Balance Sheet, on the accounting records of the Group Companies, except as set forth in Section 3.4(f) of the Disclosure Schedule, as of March 25, 2024, were collectible in full within 180 days after billing. The reserve for bad debts shown on the Latest Balance Sheet or, with respect to accounts receivable arising after the date of the Latest Balance Sheet, on the accounting records of

the Group Companies, have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

(g) All inventory of the Group Companies, whether or not reflected in the Latest Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, reasonably expected to be obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Group Companies free and clear of all Liens other than Permitted Liens, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in- process or finished goods) are not excessive, but are reasonable in the present circumstances of the Group Companies.

(h) All accounts payable of the Group Companies reflected on the Latest Balance Sheet and the accounts payable arising after the date thereof (i) have arisen from bona fide transactions entered into by the Group Companies involving the purchase of goods or services in the ordinary course of business consistent with past practice; and (ii) except as set forth in Section 3.4(h) of the Disclosure Schedules, as of March 25, 2024, were not aged over 90 days.

(i) All bank accounts of the Company Group have been reconciled to the Latest Balance Sheet and any unreconciled differences have been identified for recording.

Section 3.5 Consents and Approvals; No Violations.

(a) Assuming the truth and accuracy of the representations and warranties set forth in Section 5.5, no notices to, filings with or authorizations, consents or approvals of any Governmental Entity are necessary for the execution, delivery or performance by the Company of this Agreement or the Ancillary Documents to which the Company is or will be a party or the consummation by the Company of the transactions contemplated hereby or thereby, except for (i) notices, filings, authorizations, consents or approvals as may be required under the HSR Act (or any similar non-U.S. Laws); (ii) those that may be required solely by reason of Buyer's (as opposed to any other third-party's) participation in the transactions contemplated hereby or thereby; (iii) those the failure of which to obtain or make would not reasonably be expected to have a Company Material Adverse Effect; (iv) compliance with and filings under any liquor Laws that require notice to or consent of a liquor Governmental Entity due to a change in ownership in connection with any and all Permits that pertain to the purchase, sale, and service of liquor; and (v) applicable requirements, if any, of applicable state and federal securities Laws.

(b) Neither the execution, delivery and performance by the Company of this Agreement nor the execution, delivery and performance by the Group Companies of the Ancillary Documents to which each Group Company is or will be a party nor the consummation by the Group Companies of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of such Group Company's Governing Documents; (ii) except as set forth on Section 3.5 of the Disclosure Schedules, result in a violation or breach of, conflict with or constitute (with or without due notice or lapse of time or both) a default under or give rise to any right of termination, modification, cancellation, amendment or acceleration or result in the loss of a material benefit or right under, any Material Contract, Real Property Lease or Permit; (iii) violate

any order, writ, injunction, decree, Law, statute, rule or regulation of any Governmental Entity having jurisdiction over the Group Companies; (iv) except as contemplated by this Agreement or with respect to Permitted Liens or Liens arising under applicable federal and state securities Laws, result in the creation of any Lien upon any of the properties or assets of the Group Companies; or (v) except as set forth on Section 3.5 of the Disclosure Schedules, require the consent of or notice to any Person under a Material Contract, Real Property Lease or Permit, except in the case of clauses (ii) through (v), as would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.6 Material Contracts.

(a) Section 3.6(a) of the Disclosure Schedules sets forth a true, complete and accurate list, and true, complete and accurate copies have been made available to Buyer, of each contract or agreement, other than Real Property Leases, to which any Group Company is a party as of the date hereof or by which any Group Company is bound as of the date hereof that is:

(i) (A) a contract for the employment of any employee providing annual base salary in excess of $50,000, except for any such contract that can be terminated by the Group Companies without cause and without incurring severance, termination compensation, or similar obligations, and/or (B) any contract for the employment of any employee which cannot be terminated by the Group Companies without cause and without incurring severance, termination compensation, or similar obligations;

(ii) a lease or agreement under which a Group Company is lessee of or holds or operates any tangible property (other than real property), owned by any other Person, except for any such lease or agreement under which the aggregate annual rental payments do not exceed $50,000;

(iii) a lease or agreement under which a Group Company is lessor of or permits any third-party to hold or operate any tangible property (other than real property), owned or controlled by such Group Company, except for any such lease or agreement under which the aggregate annual rental payments do not exceed $50,000;

(iv) a partnership agreement or joint venture agreement or a similar contract for any sharing of revenues, profits or losses;

(v) a contract that by its terms contains any covenant or provision currently in effect prohibiting any Group Company from freely engaging in any line of business or with any Person in any geographic area or that prohibits any Group Company from soliciting the services of employment from any other Person;

(vi) a contract that relates to the sale of any assets, other than in the ordinary course of business of the Group Companies, for consideration in excess of $50,000;

(vii) an agreement relating to indebtedness for borrowed money incurred by any Group Company or contemplating the issuance by any Group Company of any note, indenture or other evidence of indebtedness or guarantee by any Group Company of indebtedness

or liabilities of any other Person (in each case, other than to the extent attributable to Permitted Liens);

(viii) a contract with any Governmental Entity (other than Permits);

(ix) a contract with any Material Supplier;

(x) a contract that requires any Group Company to purchase all or substantially all of its requirements of a particular product from a supplier;

(xi) a contract between or among one or more of the Group Companies on the one hand, and Seller, any Affiliate of Seller or any Related Party on the other hand (each, an "***Affiliate Agreement***"), other than this Agreement and the Ancillary Documents;

(xii) (A) a license (or other contract granting the Company) third-party Intellectual Property Rights used in the conduct of the business of the Group Companies (other than (1) licenses of commercially available "off-the-shelf" software or similar SaaS agreements with a replacement cost or annual license, maintenance and other fees of less than $50,000 in the aggregate, and (2) any license between or among one or more of the Group Companies) and (B) a license or other contract granting any rights in any Group Company Owned Intellectual Property to third parties (other than(1) any license between or among one or more of the Group Companies; (2) contracts that provide third parties with a limited, nonexclusive license to use any Group Company Owned Intellectual Property in the ordinary course of business, including to promote the business of the Group Companies; and (3) contracts containing a nonexclusive license or other nonexclusive grant of rights to service providers, contractors or vendors entered into for the provision of services to one or more of the Group Companies by such Persons);

(xiii) a collective bargaining agreement or other contract with any labor union;

(xiv) a contract involving the grant of franchise or sub-franchise rights, or any other contract with any recipient of such rights; and

(xv) a conciliation, settlement or similar contract pursuant to which any Group Company will be required to satisfy any payment obligation after the date of this Agreement not fully covered by insurance (excluding any retention or deductible incurred) (A) in connection with any class action, or (B) in excess of 50,000 (in the aggregate for all such contracts, but excluding legal fees and related costs and expenses) in connection with any Action other than any class action.

Any contract that is required (or, if entered into after the date hereof, would have been required) to be listed pursuant to Section 3.6(a) is a "***Material Contract***."

(b) Except as set forth on Section 3.6(b) of the Disclosure Schedules, each Material Contract is valid and binding in all material respects on the Group Company that is a party to it and enforceable in accordance with its terms against such Group Company and, to the Company's knowledge, each other party thereto (subject to applicable Enforceability Exception). Except as set forth on Section 3.6(b) of the Disclosure Schedules, (i) the Group Companies and,

to the Company's knowledge, each other party thereto are not in breach or default in any material respect of its obligations under (or is alleged to be in breach or default under), and since January 1, 2023, no Group Company has provided or received any notice of any breach of or intention to terminate or not renew, any Material Contract and (ii) to the Company's knowledge, no event has occurred that, with or without notice or lapse of time or both, would constitute or result in such a breach or a default under any Material Contract.

Section 3.7 Absence of Changes. Except as set forth on Section 3.7 of the Disclosure Schedules, since the date of the Balance Sheet, the Group Companies have operated their respective businesses in the ordinary course of business. Without limiting the generality of the foregoing, since that date (a) there has not been any Effect that has had, or would reasonably be expected to have, a Company Material Adverse Effect, and (b) no Group Company has taken any action or engaged in any of the activities that would be prohibited from being freely taken by Section 6.1 if such action had been taken after the date hereof.

Section 3.8 Litigation. Except as set forth on Section 3.8 of the Disclosure Schedules, as of the date of this Agreement, there is no suit, litigation, arbitration, claim, demand, complaint, inquiry, mediation, audit, investigation, action or other proceeding by or before any Governmental Entity ("***Action***") pending or, to the Company's knowledge, threatened against the Group Companies or any of their respective properties or assets that (i) has had or if determined adversely to any Group Company would cause Losses (excluding legal fees and related costs and expenses) exceeding or that would reasonably be expected to exceed $50,000, individually (which, for the avoidance of doubt, in the case of any class action, shall be determined on a class-wide basis), other than for claims fully covered by insurance (excluding any retention or deductible incurred), or (ii) has resulted or would reasonably be expected to result in any material injunctive or other equitable relief being granted against any Group Company. As of the date of this Agreement, there is no Action pending or, to the knowledge of the Company, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement. Except as set forth on Section 3.8 of the Disclosure Schedules, as of the date of this Agreement, the Group Companies are not subject to any order, writ, injunction or decree directed specifically at the Group Companies or their assets or properties pursuant to which the Group Companies have outstanding obligations in any material respect.

Section 3.9 Employee Plans.

(a) Section 3.9(a) of the Disclosure Schedules sets forth a true, complete and correct list of all material Employee Benefit Plans.

(b) No Group Company or an ERISA Affiliate maintains, sponsors or contributes to, or is obligated to contribute to, and has not within the preceding six (6) years maintained, sponsored or contributed or been obligated to contribute to, or had any actual or contingent liability in respect of, (i) a "multiemployer plan" (within the meaning of Section 3(37) or Section 4001(a)(3) of ERISA) or other "employee pension benefit plan," (within the meaning of Section 3(2) of ERISA) that is subject to Title IV of ERISA or Section 412 or Section 430 of the Code, (ii) any "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413(c) of the Code), (iii) any "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA), or (iv) any "voluntary employee benefit association" (within the meaning of Section 501(c)(9) of the Code). No Group Company has any liability with respect

to and no Employee Benefit Plan provides any post-termination or retiree welfare benefits to former employees, directors, officers, or consultants of the Group Companies other than health continuation coverage pursuant to COBRA.

(c) Except as provided in Section 3.9(c) of the Disclosure Schedule, each Employee Benefit Plan has been established, and since January 1, 2018 was maintained, funded and administered in all material respects in accordance with its terms and complies in all material respects in form and operation with all applicable requirements of ERISA, the Code, and any other applicable federal, state, and local Laws and regulations, and none of the Group Companies or, to the knowledge of the Company, any "party in interest" or "disqualified person" with respect to the Employee Benefit Plans has engaged in a non-exempt "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA. To the knowledge of the Company, no fiduciary has any liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any Employee Benefit Plan that would result in any liability to any of the Group Companies. Except as provided in Section 3.9(c) of the Disclosure Schedule, each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service ("***IRS***"), or with respect to a preapproved plan, can rely on an opinion or advisory letter from the IRS to the preapproved plan sponsor, to the effect that the form of such Employee Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such Employee Benefit Plan.

(d) Except as provided in Section 3.9(d) of the Disclosure Schedule, there is no litigation, action, investigation, audit or other administrative proceeding pending, asserted, or instituted, or to the knowledge of the Group Companies, threatened, against an Employee Benefit Plan, or against any fiduciary or administrator of an Employee Benefit Plan with respect to the operations of the Employee Benefit Plan (other than routine claims for benefits), nor does any Group Company have any knowledge of facts or circumstances that exist that could reasonably give rise to any such actions.

(e) With respect to each Employee Benefit Plan, the Company has made available to Buyer true, complete and accurate copies, if applicable, of (i) the current plan and all amendments thereto (or if such Employee Benefit Plan is not in written form, a written summary of the material terms thereof), related trust documents, insurance contracts or other funding arrangements, and all amendments thereto, (ii) the most recent summary plan description and any summaries of material modification related thereto distributed to participants, (iii) the three most recent annual report with applicable attachments (Form 5500 series), (iv) the most recent IRS determination or opinion letter, if applicable, (v) the three most recent years of nondiscrimination tests performed under the Code, (vi) the most recent actuarial valuation (if applicable), and (vii) copies of all notices, letters or other correspondence from the IRS, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Entity for the past six (6) years relating to any Employee Benefit Plan.

(f) Except as provided in Section 3.9(f) of the Disclosure Schedule, since January 1, 2018, all contributions (including all employer contributions, employee salary reduction

contributions and premium payments) required to have been made under any of the Employee Benefit Plans or by Law, to any funds or trusts established thereunder or in connection therewith have been made by the due date thereof (including any valid extension), and all contributions for any period ending on or prior to the Closing Date that are not yet due will have been paid or sufficient accruals for such contributions and other payments are duly and fully provided for on the Balance Sheet. As of the Closing, and subject only to normal retroactive adjustments in the ordinary course of business of the Group Companies, all insurance premiums will have been paid in full and, with respect to each Employee Benefit Plan that is an employee welfare benefit plan within the meaning of Section 3(1) of ERISA the claims of which are not fully insured, all reported claims have been paid in full or will be accrued on the Balance Sheet.

(g) Each Group Company complies in all material respects with the applicable requirements under the Affordable Care Act, the Code, ERISA, COBRA, HIPAA, and other federal requirements for employer-sponsored health plans, and any corresponding requirements under state statutes, with respect to each Employee Benefit Plan that is a group health plan within the meaning of Section 733(a) of ERISA, Section 5000(b)(1) of the Code, or such state statute. No Group Company has incurred (whether or not assessed) since January 1, 2018, or is reasonably expected to incur or to be subject to, any Tax or other penalty with respect to the reporting requirements under Sections 6055 and 6056 of the Code, as applicable, or under Section 4980B, 4980D or 4980H of the Code.

(h) Each Employee Benefit Plan can be amended, terminated, or otherwise discontinued after the Closing in accordance with its terms and applicable Law, without material liabilities to Buyer, any of the Group Companies or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event.

(i) No Group Company has a contract, plan, or commitment, whether legally binding or not, to (i) create any additional Employee Benefit Plans or (ii) modify any existing Employee Benefit Plan.

(j) Except as otherwise set forth on Section 3.9(j) of the Disclosure Schedules, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not, either alone or in combination with any other event, (i) entitle any current or former employee, officer, director or consultant of a Group Company to severance pay or any other similar termination payment or (ii) accelerate the time of payment or vesting for, or increase the amount of or otherwise enhance any benefit due to any such employee, officer, director or consultant. No Group Company is a party to any agreement, contract, arrangement or plan (including any Employee Benefit Plan) that could result, separately or in the aggregate, in connection with the transactions contemplated by this Agreement (either alone or in combination with any other events), in the payment of any "parachute payments" within the meaning of Section 280G of the Code (whether or not such payments are considered to be reasonable compensation for services rendered). There is no agreement, plan or other arrangement to which any Group Company is a party or by which any of them is otherwise bound to compensate any person in respect of taxes or other liabilities incurred with respect to Section 409A or 4999 of the Code.

(k) Each Employee Benefit Plan (or any other agreement, program, policy or arrangement by or to which any of the Group Companies is a party, is bound or is otherwise liable)

that constitutes a nonqualified deferred compensation plan for purposes of Section 409A of the Code has been operated in compliance with Section 409A of the Code and all applicable guidance from the Internal Revenue Service.

Section 3.10 Environmental Matters.

(a) The Group Companies are, and for the past three (3) years have been, in compliance in all material respects with all Environmental Laws.

(b) The Group Companies hold and are in compliance in all material respects with all permits, licenses, approvals, certificates, registrations and other authorizations that are required pursuant to Environmental Laws ("***Environmental Permits***") for the lawful conduct of their businesses, each of which is currently valid and in full force and effect and there is no Action pending or, to the knowledge of the Company, threatened in writing that would reasonably be expected to result in the termination, revocation, suspension or material restriction of any such Environmental Permit.

(c) No Group Company is subject to any order, writ, injunction, decree (including consent decree) or other written agreement with any Governmental Entity in settlement of any alleged violation of or liability under any applicable Environmental Law, under which any Group Company has any unfulfilled obligations with respect to such violation or liability. No Group Company has retained, assumed or undertaken, by contract or operation of law, any material liability, including obligation for corrective or remedial action, of any Person that is not a Group Company relating to Environmental Laws.

(d) The Group Companies have not treated, stored, disposed of, arranged for the disposal of, transported, handled or released any toxic or otherwise hazardous material, substance, pollutant, contaminant or waste in material violation of Environmental Laws or in a manner that would reasonably be expected to result in material liability to any Group Company pursuant to any applicable Environmental Law.

Section 3.11 Compliance with Applicable Law; Permits. The Group Companies are, and have been for the past three (3) years, in compliance in all material respects with all applicable Laws. The Group Companies have obtained all permits, licenses, approvals, certificates and other authorizations from all Governmental Entities ("***Permits***") required to conduct their businesses or for the ownership and use of their properties and assets. All such Permits are valid and in full force and effect. There has occurred no default or non-compliance for the past three (3) years, in any material respect under any such Permit by any of the Group Companies, and all fees and charges due under any such Permit have been paid in full. There is no Action pending or, to the knowledge of the Company, threatened that would reasonably be expected to result in the termination, revocation, suspension or material restriction of any Permit, or the imposition of any material fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Permit. No Group Company has, for the past three (3) years, received any written notice from any Governmental Entity or any other Person alleging that any Group Company is not in compliance in all material respects with any Law applicable to the conduct of their businesses, except for such matters that have been fully resolved. Section 3.11 of the Disclosure Schedules lists all current Permits issued to the Group Companies that pertain to the

purchase, sale, and service of liquor, including the names of the Permits and their respective dates of expiration.

Section 3.12 Intellectual Property Rights; Data Privacy and Security.

(a) Intellectual Property Rights.

(i) The Group Companies solely and exclusively own free and clear of all Liens (other than Permitted Liens), or possess a valid, written license or otherwise have the valid right to use, all Group Company Intellectual Property . The Group Company Intellectual Property includes all of the Intellectual Property Rights necessary and sufficient to enable each Group Company to conduct the business of such Group Company as currently conducted.

(ii) Section 3.12(a)(ii) of the Disclosure Schedules sets forth a true, complete and accurate list of all (A) Intellectual Property Rights that are owned, purported to be owned, or exclusively licensed by any of the Group Companies and subject to an issuance, registration or pending application for registration or issuance ("***Group Company IP Registrations***"); (B) all material unregistered Trademarks included in the Group Company Owned Intellectual Property; (C) all Software owned or exclusively or perpetually licensed by any of the Group Companies; and (D) all social media accounts controlled by or on behalf of the Group Companies. All necessary registration, maintenance and renewal fees and filings in connection with the Group Company IP Registrations that are or were due for payment or filing on or before the date hereof have been timely paid or filed, as applicable, except where the applicable Group Company has, in its reasonable business judgment, decided to cancel, abandon, allow to lapse or not renew such issuance, registration or application. There are no actions that must be taken by any Group Company within thirty (30) days following the date of this Agreement, including the payment of any registration, maintenance, or renewal fees, or the filing of any documents, applications, or certificates, for the purposes of maintaining, or renewing any Group Company IP Registrations. No issuance, registration, or application included in the Group Company IP Registrations has been cancelled, abandoned, allowed to lapse or not renewed, except where such Group Company has, in its reasonable business judgment, decided to cancel, abandon, allow to lapse or not renew such issuance, registration or application. Each Group Company IP Registration lists one of the Group Companies as the record owner. The Group Company IP Registrations are subsisting and such Intellectual Property Rights associated therewith or embodied therein are valid and enforceable, except where the applicable Group Company has, in its reasonable business judgment, decided to cancel, abandon, allow to lapse or not renew such issuance, registration or application. The Group Companies have used commercially reasonable efforts to protect their respective rights in the Group Company Owned Intellectual Property, and there have been no acts or omissions by the Group Companies, the result of which would be to compromise the rights of the Group Companies to apply for or enforce appropriate legal protection of such Group Company Owned Intellectual Property.

(iii) No Group Company Owned Intellectual Property is subject to any proceeding or outstanding decree, order, judgment, settlement agreement or stipulation that restricts in any manner the use, transfer, assignment or licensing thereof by the Group Companies or that may affect the validity, use or enforceability of the Group Company Owned Intellectual Property. All Group Company Owned Intellectual Property will be fully transferable, alienable,

and licensable by the Group Companies following the Closing without restriction and without payment of any kind to any Person in the same manner and to the same extent as immediately prior to the Closing. The Group Companies have not (A) granted to a third party any exclusive license of or exclusive right to any Group Company Owned Intellectual Property; or (B) authorized or agreed to joint ownership with a third-party of any Group Company Owned Intellectual Property.

(iv) No Group Company has received in writing any notice or claim, or, to the Company's knowledge, has received any oral notices or claims, or is currently subject to or in the past three (3) years been subject to any Action, including any opposition, cancellation, *inter partes* review, or interference, nullity, or revocation, contesting the validity, enforceability, patentability, registrability, use, ownership or title of any Group Company Owned Intellectual Property.

(v) To the knowledge of the Company, no third-party is infringing, misappropriating, diluting or violating any Group Company Owned Intellectual Property. There are currently no claims pending before any Governmental Entity that have been brought by any of the Group Companies against any third party alleging infringement, dilution, violation or misappropriation of any Group Company Owned Intellectual Property.

(vi) No Group Company has, for the past three (3) years, received any (1) written notice, claim or indemnification request asserting that infringement, misappropriation, violation, dilution or unauthorized use of any Intellectual Property Rights by any Group Company is occurring or has occurred or (2) unsolicited written request that any Group Company take a license under any Intellectual Property Rights or other proprietary rights owned by a third-party. No such notice, claim or request is being threatened in writing.

(vii) There are currently no claims pending before any Governmental Entity against the Group Companies alleging that any of the Group Companies are infringing, misappropriating, diluting or violating any Intellectual Property Rights owned by any third party. No Intellectual Property Right owned by any Group Company or the conduct of business of any Group Company, has for the past three (3) years, infringed upon, misappropriated, diluted or otherwise violated, or currently infringes, misappropriates, dilutes or otherwise violates, the Intellectual Property Rights of any Person. No such claim is being or in the past three (3) years has been threatened in writing nor, to the knowledge of the Company, has the Company received any oral threat of such claim, nor, to the knowledge of the Company, is there any basis for any such claim.

(viii) Each of the Group Companies has taken reasonable steps to maintain the confidentiality of the Trade Secrets owned by any Group Company, which steps are consistent with all applicable Laws and industry standards in the industry in which the Group Companies operate. No Trade Secrets included in the Group Company Owned Intellectual Property have been authorized to be disclosed or have actually been disclosed by any Group Company to any Person other than pursuant to a written confidentiality agreement restricting disclosure or use thereof. There has been no material unauthorized disclosure to any third Person of any Trade Secrets or other material Group Company confidential information used in connection with the conduct of the business of the Group Companies as currently conducted.

(ix) Each current and former employee, consultant and contractor of the Group Companies who is or was involved in, or has participated in or contributed to, the conception, development, authoring, creation, or reduction to practice of any Intellectual Property Rights for or on behalf of the Group Companies has entered into a written agreement in the form provided by the Group Companies to Buyer that (A) includes appropriate non-disclosure and confidentiality obligations in favor of the Group Companies and (B) an effective assignment to the Group Companies of all right, title, and interest in and to any such Intellectual Property Rights. To the knowledge of the Company, no such employee, consultant, or contractor is, or has been in, breach of such agreements. No current or former founder, employee, consultant, officer or director of the Group Companies (A) owns any Intellectual Property Rights used or held for use by the Group Companies or (B) has made any claims with respect to, or has any right, license, claim or interest whatsoever in, such Intellectual Property Rights.

(x) Neither this Agreement nor the transactions contemplated hereby will result in: (A) a loss of rights in, or imposition of any Lien on, (1) any Group Company Owned Intellectual Property, or (2) pursuant to any contract or agreement to which any Group Company is a party, any Group Company Intellectual Property that is owned by other Persons and provided to one or more of the Group Companies pursuant to a license or other contract; (B) any Person being granted rights in or access to, or, for Software included in the Group Company Intellectual Property; (C) the placement in escrow or release from escrow, of any Group Company Owned Intellectual Property; (D) any Group Company granting or assigning to any Person any right in or license to any Group Company Owned Intellectual Property; (E) any Group Company being bound by, or subject to, any non-compete or other contractual restriction on the operation or scope of their business; (F) the termination or material alteration of the Group Companies' right in or to any Group Company Owned Intellectual Property; (G) any Group Company being obligated to pay any royalties or license fees for Intellectual Property Rights to any Person in excess of those payable by such Group Company prior to the Closing; or (H) pursuant to any contract or agreement to which any Group Company is a party, any Lien, assignment, grant of rights, or similar obligation that materially affects the Intellectual Property Rights of Buyer or any Affiliate of Buyer (other than the Group Companies).

(b) Data Privacy and Security.

(i) The IT Systems have been properly maintained and are adequate and reasonably sufficient (including with respect to working condition and capacity) for the operations of each Group Company as currently conducted. Each Group Company has all rights and licenses necessary to use and operate the IT Systems, and this Agreement and the transactions contemplated by this Agreement will not require the consent of any third-party to use such IT Systems after the Closing or result in the violation of any contracts or agreements with respect to such IT Systems. Each Group Company (A) has taken commercially reasonable measures designed to protect the performance, security and integrity of the IT Systems (and all Software and confidential or otherwise sensitive information or data stored thereon) and (B) maintains commercially reasonable documentation regarding all IT Systems, their methods of operation and their support and maintenance. During the three (3) year period prior to the date hereof, except as set forth in Section 3.12(b)(i) of the Disclosure Schedules, there has been no (I) material failure or material interruption with respect to any IT Systems, and (II) Security Breaches of any IT Systems (or any Software or confidential or otherwise sensitive information or data stored thereon).

(ii) The Group Companies have implemented and, during the past five (5) years, complied in all material respects with a written information security program and related policies and procedures that conform in all material respects with Data Protection Requirements, which (A) include technical, administrative, organizational and physical safeguards, controls and measures designed to protect the IT Systems against unauthorized intrusion of, unauthorized access to or use of and to safeguard the security, confidentiality, availability, and integrity of any stored or hosted data; and (B) includes incident response procedures. The Group Companies have conducted or have caused to be conducted security assessments and tests of the IT Systems on no less than an annual basis to test the IT Systems for vulnerabilities and cyber threats and timely installed software security patches and other fixes to identified technical information security vulnerabilities. The Group Companies maintain back-up systems and disaster recovery and business continuity plans and policies designed to minimize business disruption and provide for continuity of the IT Systems and the business of the Group Companies in all material respects.

(iii) For the past three (3) years, except as forth in Section 3.12(b)(iii) of the Disclosure Schedule, each Group Company has provided a privacy notice in compliance with all applicable Data Protection Requirements accessible on all of its websites (collectively, the "***Privacy Policies***"), true, complete and correct copies of which have been made available to Buyer. Each Group Company's privacy practices conform, and for the past three (3) years have conformed in all material respects, to their respective Privacy Policies at the time each Privacy Policy was in effect and with any of such Group Company's applicable public statements regarding the Group Company's privacy and information security practices.

(iv) For the past five (5) years, each Group Company has complied in all material respects with all applicable Data Protection Requirements, including as it relates to the Processing of any Personal Information by each Group Company or, to the knowledge of the Company, by third parties acting on such Group Company's behalf or having authorized access to such Group Company's records. Each Group Company's Privacy Policies and its practices concerning the Processing of Personal Information conform, and for the past three (3) years have conformed, in all material respects to all of such Group Company's applicable contractual commitments, including, as applicable, to its customers and users of such Group Company's websites, web or device applications. No Group Company has disclosed, nor has any obligation to disclose, any Personal Information to any third-party in violation of any Data Protection Requirement or any Privacy Policy. No claims have been asserted or threatened in writing against any Group Company by any Person alleging a violation of any individual's or data subject's privacy rights, including under the Privacy Policies or any Data Protection Requirements. Neither this Agreement nor the transactions contemplated by this Agreement will violate any Data Protection Requirements or the Privacy Policies as they currently exist or, to the extent such Privacy Policies remain applicable to Personal Information collected or obtained by each Group Company, as they existed at any time during which any such Personal Information was collected or obtained. Each Group Company has made all disclosures to, and obtained any necessary consents from, users, customers, employees, contractors, and other applicable Persons required by Data Protection Requirements for the Processing and transfer of Personal Information in connection with this Agreement or transaction contemplated by the Agreement. Each Group Company is not subject to any contractual requirements or other legal obligations that, following the Closing, would prohibit Buyer from receiving or using Personal Information in the manner in which each Group Company receives and uses such Personal Information prior to the Closing

Date. With respect to all Personal Information in the possession of any Group Company, such Group Company has taken commercially reasonable steps designed to protect such Personal Information against loss and unauthorized access, use, modification, disclosure, Processing, or other misuse. Each Group Company has taken commercially reasonable steps to train all employees and contractors with access to Personal Information in the possession of a Group Company on applicable aspects of Data Protection Requirements and the Privacy Policies.

(v) For the past three (3) years, there have been (A) no material Security Breaches with respect to any Personal Information or confidential information maintained by or, to the knowledge of the Company, on behalf of any Group Company; (B) no Security Breaches resulting in the disclosure of electronic communications or Personal Information by any Group Company to any third-party, including any Governmental Entity, that would require notification to any individual or Governmental Entity; (C) no complaints, claims or legal proceedings by or before any Governmental Entity regarding any Group Company's Processing of Personal Information or the violation of any Data Protection Requirements; or (D) to the knowledge of the Company, no investigation, audit or other inquiry from any Governmental Entity regarding any Group Company's Processing of Personal Information or any facts or circumstances which could form the basis for any of the foregoing.

Section 3.13 Labor Matters.

(a) For the past three (3) years, there has been no pending or, to the knowledge of the Company, threatened strike, slowdown, work stoppage, lockout, picketing, unfair labor practice charge or complaint, or other material labor dispute against or affecting the Group Companies. No Group Company is a party to or bound by any collective bargaining agreement or other contract or bargaining relationship with any labor union or similar organization, and no labor union or other labor organization currently represents the employees of the Group Companies. There are, and for the past three (3) years there have been, no union organizing activities by or on behalf of any labor organization with respect to employees of the Group Companies, and no such activities are currently underway or, to the knowledge of the Group Companies, threatened. No union has filed any representation petition, made any written or oral demand for recognition or certification, and there are no representation or certification proceedings presently pending or threatened. The Group Companies have not, in the ninety (90) days prior to the Closing Date, effectuated a "plant closing" or "mass layoff" as those terms are defined in the WARN Act, and no employee layoffs, terminations, furloughs, plant, facility or departmental closures or shutdowns, reductions in force or reductions in hours, compensation or benefits, in each case, that would require notice under the WARN Act, are currently contemplated, planned or have been announced or implemented by any of the Group Companies.

(b) The Group Companies are in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Group Companies, including applicable Laws related to workers' compensation, safety and health, wages and hours (including the classification of independent contractors and exempt and non-exempt employees), civil rights, employment discrimination, harassment, and retaliation, equal employment opportunities, equal pay, immigration (including the completion of Form I-9s for all employees and the proper confirmation of employee visas), collective bargaining, labor relations, plant closures and layoffs (including the WARN Act), working conditions,

employee benefits, family and medical leave, employee trainings and notices, employee leave issues, and COVID-19 (including the Families First Coronavirus Response Act and the Paycheck Protection Program), and the collection and payment of withholding or social security taxes. Each of the Group Companies has maintained an Employment Eligibility Form on Form I-9 for each current and former employee that is or was employed by any of the Group Companies in the United States in accordance with all applicable Laws. Except as set forth in Section 3.13(b) of the Disclosure Schedules, there are no actions, suits, claims, investigations, or other legal proceedings against any Group Company pending or, to the Company's knowledge, threatened to be brought or filed, by or with any Governmental Entity or arbitral tribunal, in connection with the employment or termination of employment of any current or former employee of any Group Company, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, misclassification, safety and health, wages and hours, immigration, equal employment opportunities, employee leave issues, workers' compensation, employee benefits, equal pay, or any other employment related matter arising under applicable Laws.

(c) For the past three (3) years, the Group Companies have promptly investigated all claims of which the Company had knowledge alleging harassment (including sexual harassment), discrimination, or retaliation made against any current or former director, officer, employee or independent contractor of the Group Companies that were reasonably likely to result in material liability to any Group Company. To the extent an investigation identified any misconduct, the Group Companies have taken corrective action that is reasonably calculated to prevent further such misconduct, and the Group Companies do not reasonably expect any material liability with respect to any such allegations. To the knowledge of the Company, there are not any allegations of harassment (including sexual harassment) or other discrimination or retaliation reasonably likely to result in any material liability to any Group Company, or that, if known to the public, would bring the Group Companies into material disrepute.

(d) During the past three (3) years, (i) each of the Group Companies has fully and timely paid all wages, salaries, wage premiums, prevailing wages, commissions, bonuses, fees, tips, and other compensation which have come due and payable to their current and former employees and independent contractors under applicable law, contract, or policy maintained by such Group Company; (ii) each employee who has been classified as exempt from applicable wage and hour laws is and has been properly classified and treated by the Group Companies as such for all applicable purposes; and (iii) each individual who is or has provided services to any of the Group Companies and is or was classified by the Group Companies as an independent contractor, consultant, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(e) Except (x) as expressly contemplated by this Agreement, (y) for the individual employment agreements entered into with Thomas J. Baldwin, Nicole Thaung, and Cristina Mendoza, and (z) for short-term temporary staffing arrangements for individuals to work for less than three months in duration, none of the Group Companies are a party to or bound by (whether written or oral) any of the following contracts:

(i) any contract for the employment or engagement of any individual employee or service provider or other person (including on a full-time, part-time, temporary, independent contracting, consulting or other basis) which cannot be terminated by the Group

Companies without cause and without incurring severance, termination compensation, or similar obligations;

(ii) any contract related to bonuses, severance, or similar benefits which will be due upon any termination of employment or other engagement; or

(iii) any contract with any staffing agency, labor agency, or similar provider of temporary workers.

Section 3.14 Insurance. Section 3.14 of the Disclosure Schedules contains a list of all policies of fire, liability, workers' compensation, property, casualty and other forms of insurance owned or held by the Group Companies as of the date of this Agreement. No Group Company is in material default with respect to its obligations under any such insurance policy, and there is no claim pending under any of such policies as to which coverage has been denied or disputed by the underwriters of such policies in writing (other than reservation of rights letters). All such policies are in full force and effect, will not terminate as a result of the transactions contemplated by this Agreement (except for the cyber policy and the management liability policy, including directors and officers, employment practices, and fiduciary duty), all amounts due for premiums with respect thereto covering all periods up to and including the Closing Date will have been paid in accordance with their terms and no written notice of cancellation, termination, material premium increase or reduction in coverage has been received by the Group Companies with respect to any such policy.

Section 3.15 Tax Matters.

(a) Each Group Company has timely filed (or had filed on its behalf), taking into account valid extensions of time in which to file, all U.S. federal and other material Tax Returns required to be filed by it, and all such Tax Returns are accurate, complete and correct in all material respects. Each Group Company has fully and timely paid to the appropriate Governmental Entity all U.S. federal and other material Taxes due and owing by it (whether or not shown on any Tax Return).

(b) No Group Company currently is the subject of a Tax audit or examination with respect to Taxes. There is no presently pending written request for information, claim, litigation, proceeding or matter in controversy with any Governmental Entity with respect to Taxes of any Group Company and no such examination, claim, litigation, proceeding or similar action has been threatened in writing. All deficiencies for Taxes asserted or assessed against a Group Company have been fully and timely paid or settled and are properly reflected on the Financial Statements.

(c) No Group Company has entered into any agreement or waiver, or has been requested to enter into any agreement or waiver, extending the statutory period of limitations in which any amount of Tax may be assessed or collected by any taxing authority.

(d) The Group Companies are not, individually or collectively, a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar agreement or arrangement (other than any such agreement or arrangement entered into in the ordinary course of business of the Group Companies the primary purpose of which is not related to Taxes) and, to the knowledge of the Company, no Group Company has any liability for Taxes of any Person (other than a Group

Company as a result of being a member of an affiliated, combined or unitary group of which the Company is the common parent) under Treasury Regulations Section 1.1502-6, Treasury Regulations Section 1.1502-78 or similar provision of state, local or foreign Tax Law.

(e) No Group Company is a party to or bound by any closing agreement pursuant to Section 7121 of the Code or any similar provision of state, local or foreign Tax Law.

(f) No Group Company has been a party to or engaged in any transaction that is a "listed transaction" within the meaning of Section 1.6011-4(b)(2) of the Treasury Regulations (or any similar provision of state, local or foreign Tax Law).

(g) Each Group Company has collected or withheld all material Taxes required to be collected or withheld by it, including in connection with any amounts paid or owing to any employee, independent contractor, creditor, client, shareholder or other party. All such Taxes to the extent due and owing have been paid to the appropriate Governmental Entity, or to the extent not due and owing, have been set aside in appropriate accounts for future payment when due.

(h) The amount of the Group Companies' aggregate liability for unpaid Taxes as of the end of each fiscal year of the Company commencing on or after March 29, 2021, does not exceed the amount of accruals for Taxes (taking into account the Company's annual reconciliation procedures, but excluding reserves for deferred Taxes established to reflect timing difference between book and tax income) reflected on the corresponding Financial Statements. The amount of the Group Companies' accruals for Taxes (excluding reserves for deferred Taxes established to reflect timing difference between book and tax income) for periods following the end of the period covered by the 2023 Audited Financial Statements were prepared in accordance with the past custom and practice of the Group Companies.

(i) No claim has been made by any Governmental Entity in any jurisdiction where any Group Company does not file Tax Returns that any Group Company is, or may be, subject to Tax by, or required to file any Tax Return in, that jurisdiction.

(j) There are no Liens for Taxes on the assets of any Group Company other than Permitted Liens.

(k) No private letter ruling, technical advice memorandum or similar agreement or ruling has been requested, entered into, or issued by any Governmental Entity with respect to Taxes of any Group Company.

(l) No Group Company will be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of any:

(i) change in a method of accounting under Section 481 of the Code, or under any comparable provision of Tax Law, or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) installment sale or open transaction occurring on or prior to the Closing Date;

(iii) prepaid amount received on or before the Closing Date;

(iv) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law);

(v) closing agreement under Section 7121 of the Code, or under any comparable provision of Tax Law; or

(vi) election under Section 108(i) of the Code.

(m) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period in Section 897(c)(1)(a) of the Code.

(n) No Group Company has been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code within the past five (5) years.

(o) No Group Company (i) is a "controlled foreign corporation" as defined in Section 957 of the Code, (ii) is a "passive foreign investment company" within the meaning of Section 1297 of the Code, or (iii) has a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a country other than the country in which it is organized.

(p) No Group Company is, or has been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(q) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Group Companies under Sections 269, 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder, or under any comparable provision of Tax Law.

(r) No Group Company has claimed or received any employee retention credit pursuant to the CARES Act.

Section 3.16 Brokers. No broker, finder, financial advisor or investment banker, other than Piper Sandler & Co. (whose fees shall be included in the Seller Expenses), is entitled to any broker's, finder's, financial advisors' or investment banker's fee or commission or similar payment in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Group Companies.

Section 3.17 Real and Personal Property.

(a) Owned Real Property. The Group Companies own no real property, except for the Leasehold Improvements (subject to the terms of the Real Property Leases).

(b) Leas ed Real Property. Section 3.17(b) of the Disclosure Schedules sets forth the address of each Leased Real Property, a list of all Real Property Leases (including all amendments, modifications and assignments with respect thereto) for each Leased Real Property, and a list of all guarantees, including all amendments and modifications thereto and ratifications thereof, given by any Group Company or an Affiliate thereof for each Real Property Lease, to the extent in existence (each a "***Lease Guaranty***" and collectively the "***Lease Guarantees***"). A Group Company has a valid and subsisting leasehold interest in each Leased Real Property and, to the Company's knowledge, such leasehold interest is the entire leasehold interest in such Leased Real Property. Copies of each Real Property Lease and each Lease Guaranty have been made available by the Group Companies to Buyer. Except as set forth on Section 3.17(b) of the Disclosure Schedules , (i) each Real Property Lease is valid and binding in all material respects on the Group Company that is a party thereto (subject to proper authorization and execution of such Real Property Lease by the other party thereto and subject to applicable Enforceability Exception) and, to the knowledge of the Company, the counterparties thereto, and each such Real Property Lease is in full force and effect; (ii) no Real Property Lease has been materially amended or modified by any currently effective SNDAs or estoppel certificates given by any Group Company with respect to the Real Property Leases; (iii) for the past four (4) years, no Group Company has given or received written notice of a breach of, default under, or intention to terminate, any Real Property Lease or SNDA, which breach or default remains outstanding and uncured; (iv) no event has occurred that, with or without notice or lapse of time or both, would constitute or result in such a breach or default by a Group Company under any Real Property Lease; (v) no security deposit or portion thereof has been applied in respect of a breach or default under any Real Property Lease that has not been redeposited in full; (vi) no Group Company has subleased or licensed any Leased Real Property or any portion thereof; (vii) no Group Company has mortgaged, collaterally assigned or granted a security interest in a Real Property Lease or any interest therein or in any Leased Real Property or Leasehold Improvements; (viii) for the past four (4) years, no Group Company has received written notice of a currently outstanding and material breach or default under, any Lease Guaranty; and (ix) to the Company's knowledge, no event has occurred that, with or without notice or lapse of time or both, would constitute or result in a breach or default by a Group Company in any material respect under any Lease Guaranty. No Group Company has received written notice of any currently outstanding and pending or threatened condemnation or eminent domain proceeding or litigation with respect to any Leased Real Property. The Leased Real Property and all Leasehold Improvements are (A) to the knowledge of the Company, in good condition and repair (subject to normal wear and tear) and (B) suitable for the operation of the business of the Group Companies as it is currently conducted. No Group Company has received any written notice from any Governmental Entity that the Leased Real Property or the Leasehold Improvements are not in compliance in any material respect with applicable Laws, including any building or zoning Laws. No Group Company has received any written notice that such Group Company has not fully complied with all conditions of Permits required to be issued in connection with the Leased Real Property. To the knowledge of the Company, there are no material structural defects to the Leased Real Property or the Leasehold Improvements. All utilities servicing the Leased Real Property are adequate to serve the utility needs of the Leased Real Property.

(c) Leasehold Improvements. Each of the Group Companies has good and valid title to its respective Leasehold Improvements. No Group Company has granted any, and there are no, outstanding options, rights of first offer or rights of first refusal to purchase any such Leasehold Improvements or any portion thereof or interest therein.

(d) Personal Property. The Group Companies own and have good, valid and marketable title to or hold under valid leases, all material machinery, equipment and other tangible personal property ("***Assets***") utilized by them in the conduct of their businesses, free and clear of all Liens, except for Liens identified on Section 3.17(d) of the Disclosure Schedules and Permitted Liens. The Assets are in good operating condition, having regard to the use and age thereof and reasonable wear and tear excepted, and sufficient in all material respects, in each case, to continue the conduct of the Group Companies in the same manner as conducted prior to the Closing and are fit for use in the ordinary course of business of the Group Companies and have been maintained in accordance with normal industry practice (and maintenance of such items has not been deferred beyond a reasonable time period) in all material respects.

Section 3.18 Transactions with Affiliates. Other than the Affiliate Agreements listed in Section 3.18 of the Disclosure Schedules, and except in respect of employment relationships and compensation, benefits, travel advances and employee loans in the ordinary course of business of the Group Companies or as set forth in Section 3.18 of the Disclosure Schedules, none of the Group Companies is a party to any other agreement or arrangement with, or involving the making of any payment or transfer of assets or interests to, Seller, any Affiliate of Seller (other than the Group Companies) or any present stockholder, officer, member, partner or director of Seller or any of their respective Affiliates (other than the Group Companies) or any individual related by blood, marriage or adoption to any such individual (collectively, "***Related Party***"). For purposes of this Section 3.18, "Affiliate" is any Person who controls, is controlled by, or is under common control with Angelo, Gordon & Co., L.P.

Section 3.19 Material Suppliers. Section 3.19 sets forth a list of the top five (5) suppliers (determined by the amount purchased) of the Group Companies for the fiscal year ended on March 26, 2023, and during the period of eleven fiscal periods ended January 28, 2024 (each, a "***Material Supplier***"). No such Material Supplier (i) has cancelled, terminated or amended in writing in any adverse and material respect any of the terms (whether related to payment, price or otherwise) of its relationship with any Group Company or, to the knowledge of the Company, made any threat to cancel, terminate, alter or amended in writing in any adverse and material respect any of the terms (whether related to payment, price or otherwise) of any of its contracts with any Group Company; or (ii) provided any written notice to any Group Company that it intends, anticipates or otherwise expects to stop, decrease the volume of or change, adjust, alter or otherwise modify in any adverse and material respect any of the terms (whether related to payment, price or otherwise) with respect to supplying materials, products or services to any Group Company.

Section 3.20 EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES.

(a) EXCEPT AS SET FORTH IN ARTICLE 3 AND ARTICLE 4 OF THIS AGREEMENT, NONE OF SELLER, ANY GROUP COMPANY OR ANY OTHER PERSON MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY. SELLER AND THE COMPANY EXPRESSLY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO PARENT, BUYER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL

PROJECTIONS OR OTHER SUPPLEMENTAL DATA), INCLUDING AS TO THE CONDITION, VALUE OR QUALITY OF THE GROUP COMPANIES' BUSINESSES OR ASSETS, AND EXCEPT AS SET FORTH IN ARTICLE 3 AND ARTICLE 4 OF THIS AGREEMENT, SELLER AND THE COMPANY SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH ASSETS, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT, SUBJECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 3 AND ARTICLE 4 OF THIS AGREEMENT, SUCH SUBJECT ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND PARENT AND BUYER SHALL RELY SOLELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF AS WELL AS THE REPRESENTATIONS AND WARRANTIES OF SELLER AND THE COMPANY SET FORTH IN THIS AGREEMENT. THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE 3 AND ARTICLE 4 ARE QUALIFIED IN THEIR ENTIRETY BY, AND SHALL NOT BE DEEMED TO BE INACCURATE OR INCOMPLETE TO THE EXTENT OF ANY MATTER SET FORTH IN, THE DISCLOSURE SCHEDULES. ANY AND ALL PRIOR REPRESENTATIONS AND WARRANTIES (IF ANY) MADE BY ANY PERSON OR ITS REPRESENTATIVES, WHETHER VERBALLY OR IN WRITING, ARE DEEMED TO HAVE BEEN MERGED INTO AND SUPERSEDED BY THIS AGREEMENT, IT BEING INTENDED THAT NO SUCH PRIOR REPRESENTATIONS OR WARRANTIES (IF ANY) SHALL SURVIVE THE EXECUTION AND DELIVERY OF THIS AGREEMENT.

(b) SELLER AND THE COMPANY ACKNOWLEDGE THAT (I) IN CONNECTION WITH THE INVESTIGATION BY PARENT AND BUYER OF THE GROUP COMPANIES, PARENT, BUYER AND THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES HAVE RECEIVED AND, AFTER THE DATE HEREOF BUT PRIOR TO THE CLOSING, MAY RECEIVE FROM THE GROUP COMPANIES, SELLER OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, EQUITYHOLDERS, AGENTS OR REPRESENTATIVES CERTAIN PROJECTIONS, FORECASTS, ESTIMATES, PLANS OR BUDGETS OF FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS (OR ANY COMPONENT THEREOF) OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF THE GROUP COMPANIES; (II) THERE ARE UNCERTAINTIES INHERENT IN ATTEMPTING TO MAKE SUCH PROJECTIONS, FORECASTS, ESTIMATES, PLANS OR BUDGETS OF FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS (OR ANY COMPONENT THEREOF) OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF THE GROUP COMPANIES, ALL OF WHICH ARE FAMILIAR TO PARENT, BUYER AND THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES; (III) PARENT, BUYER AND THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES TAKE FULL RESPONSIBILITY FOR MAKING THEIR OWN EVALUATION OF THE ADEQUACY AND ACCURACY OF ALL SUCH PROJECTIONS, FORECASTS, ESTIMATES, PLANS OR BUDGETS OF FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE

RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS (OR ANY COMPONENT THEREOF) OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF THE GROUP COMPANIES HERETOFORE OR HEREAFTER DELIVERED TO OR MADE AVAILABLE TO PARENT, BUYER OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES (INCLUDING THE REASONABLENESS OF ANY UNDERLYING ASSUMPTIONS); (IV) PARENT AND BUYER HAVE NOT RELIED AND IS NOT RELYING ON ANY PROJECTIONS, FORECASTS, ESTIMATES, PLANS OR BUDGETS OF FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS (OR ANY COMPONENT THEREOF) OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF THE GROUP COMPANIES HERETOFORE OR HEREAFTER DELIVERED TO OR MADE AVAILABLE TO PARENT, BUYER OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES (INCLUDING THOSE PROVIDED IN CERTAIN "DATA ROOMS," CONFIDENTIAL INFORMATION MEMORANDA OR SIMILAR MATERIALS, OR MANAGEMENT PRESENTATIONS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY), AND IT SHALL HAVE NO CLAIM AGAINST ANY PERSON WITH RESPECT THERETO; AND (V) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE ANCILLARY DOCUMENTS (AS QUALIFIED BY THE DISCLOSURE SCHEDULES), PARENT AND BUYER HAVE NOT RELIED AND IS NOT RELYING ON ANY OTHER INFORMATION PROVIDED TO PARENT, BUYER OR ANY OF THEIR RESPECTIVE AFFILIATES, AGENTS AND REPRESENTATIVES.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller hereby represents and warrants to Buyer (and, with respect to Section 4.6, Parent) as of the date hereof and as of the Closing as follows:

Section 4.1 **Authority**. Seller has the requisite limited liability company power and authority to execute and deliver this Agreement and each Ancillary Document to which Seller is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which Seller is or will be a party and the performance by Seller of its obligations hereunder and thereunder have been (and the Ancillary Documents to which Seller is or will be a party will be at or prior to the Closing) duly authorized by all necessary limited liability company action on the part of Seller and no other proceeding (including by its equityholders) on the part of Seller is necessary to authorize the execution, delivery or performance of this Agreement and each of the Ancillary Documents to which Seller is or will be a party or to consummate the transactions contemplated hereby or thereby. No vote of Seller's equityholders is required to approve this Agreement (and the Ancillary Documents to which Seller is or will be a party) or for Seller to consummate the transactions contemplated hereby or thereby. This Agreement has been (and the Ancillary Documents to which Seller is or will be a party will be at or prior to the Closing) duly executed and delivered by Seller and constitutes (or will constitute when executed) a valid, legal and binding agreement of Seller (assuming that this Agreement has been, and the Ancillary Documents to which Seller is or will be a party will be, duly and validly authorized,

executed and delivered by the other Persons party thereto at or prior to the Closing), enforceable against Seller in accordance with their respective terms, subject to applicable Enforceability Exception.

Section 4.2 Consents and Approvals; No Violations.

(a) Assuming the truth and accuracy of the representations and warranties set forth in Section 5.5, no notices to, filings with or authorizations, consents or approvals of any Governmental Entity are necessary for the execution, delivery or performance by Seller of this Agreement or the Ancillary Documents to which Seller is or will be a party or the consummation by Seller of the transactions contemplated hereby or thereby, except for (i) notices, filings, authorizations, consents or approvals as may be required under the HSR Act (or any similar non-U.S. Laws); (ii) those that may be required solely by reason of Parent's or Buyer's (as opposed to any other third-party's) participation in the transactions contemplated hereby or thereby; (iii) those the failure of which to obtain or make would not reasonably be expected to have a material adverse effect on or otherwise prevent or delay the Closing; and (iv) applicable requirements, if any, of applicable state and federal securities Laws.

(b) Neither the execution, delivery and performance by Seller of this Agreement nor the execution, delivery and performance by Seller of the Ancillary Documents to which Seller is or will be a party nor the consummation by Seller of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of Seller's Governing Documents; (ii) except as set forth on Section 4.2 of the Disclosure Schedules, result in a violation or breach of, conflict with or constitute (with or without due notice or lapse of time or both) a default under or give rise to any right of termination, cancellation, amendment or acceleration or result in the loss of a material benefit or right under, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which Seller is a party or by which Seller or any of its properties or assets are bound; (iii) violate any order, writ, injunction, decree, Law, statute, rule or regulation of any Governmental Entity having jurisdiction over Seller; (iv) except as contemplated by this Agreement or with respect to Permitted Liens, result in the creation of any Lien upon any of the properties or assets of the Group Companies; or (v) require the consent, notice or other action by any Person under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which Seller is a party or by which Seller or any of its properties or assets are bound, except in the case of clauses (ii) through (v), as would not reasonably be expected to have a material adverse effect on Seller's ownership of or ability to transfer the Shares or otherwise prevent or materially delay the Closing or consummation of the transactions contemplated hereby.

Section 4.3 Title to Shares. Seller holds of record and beneficially all of the Shares, which represent all of the issued and outstanding capital stock of the Company, and has good, valid and marketable title to all of the Shares free and clear of all Liens, other than those arising under applicable state and federal securities Laws, and any transfer restrictions as may be set forth in the Company's Governing Documents. Other than the Shares, Seller has no other equity interests or rights, options, warrants, convertible or exchangeable securities, subscriptions, calls, puts or other analogous rights, interests, agreements, arrangements or commitments to acquire or otherwise relating to any equity or voting interest of any Group Company or obligating any Group Company to issue, deliver, transfer or sell any capital stock or any other equity or voting interest in any Group Company. Seller is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting or transfer of

any Shares. Assuming Buyer has the requisite power and authority to be the lawful owner of the Shares, upon delivery to Buyer at the Closing of certificates representing the Shares, duly endorsed by Seller for transfer to Buyer, good, valid and marketable title to the Shares will pass to Buyer, free and clear of all Liens, other than Liens arising under applicable state and federal securities Laws, and any transfer restrictions as may be set forth in the Company's Governing Documents.

Section 4.4 **Litigation**. There is no Action pending or, to Seller's knowledge, threatened against Seller that questions the validity or legality of this Agreement or the transactions contemplated hereby or has had or would reasonably be expected to have a material adverse effect on Seller's ownership of or ability to transfer the Shares or otherwise prevent or materially delay the Closing or consummation of the transactions contemplated hereby. Seller is not subject to any outstanding order, writ, injunction or decree that would have a material adverse effect on Seller's ownership of or ability to transfer the Shares or otherwise prevent or materially delay the Closing or consummation of the transactions contemplated hereby.

Section 4.5 **Brokers**. No broker, finder, financial advisor or investment banker, other than Piper Sandler & Co. (whose fees shall be included in the Seller Expenses), is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission or similar payment in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or any Group Company or any of their respective Affiliates.

Section 4.6 **Accredited Investor**. Seller is an "accredited investor" as defined in Section 501 of Regulation D promulgated under the Securities Act and is accepting the Stock Consideration for investment and not with a view to any distribution thereof in violation of any applicable state or federal securities laws. Seller understands that the Stock Consideration has not been registered under any state or federal securities laws and may not be sold or distributed without an effective registration statement or unless exemptions from such registration requirements are available.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER

Except as set forth in the Disclosure Schedules, each of Parent and Buyer hereby represents and warrants , on a joint and several basis, to Seller as of the date hereof and as of the Closing as follows:

Section 5.1 **Organization; Qualification**.

(a) Buyer is a limited liability company, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite limited liability company power and authority to carry on its businesses as now being conducted, except where the failure to have such power or authority would not prevent or materially delay the consummation of the transactions contemplated hereby. Parent is a corporation, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite limited liability company power and authority to carry on its businesses as now being conducted, except where the failure to have such power or authority would not prevent or materially delay the consummation of the transactions contemplated hereby.

Section 5.2 [RESERVED].

Section 5.3 Authority; Board Approval.

(a) Each of Buyer and Parent has the requisite limited liability company or corporate, as applicable, power and authority to execute and deliver this Agreement and each Ancillary Document to which Buyer and/or Parent is or will be a party, to carry out its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which Buyer and/or Parent is or will be a party and the performance by Buyer and/or Parent of its respective obligations hereunder and thereunder have been (and the Ancillary Documents to which Buyer and/or Parent is or will be a party will be at or prior to the Closing) duly authorized by all necessary limited liability company or corporate, as applicable, action on the part of Buyer and/or Parent and no other proceeding (including by its equityholders) on the part of Buyer or Parent is necessary to authorize the execution, delivery or performance of this Agreement and each of the Ancillary Documents to which Buyer and/or Parent is or will be a party or to consummate the transactions contemplated hereby or thereby. No vote of Buyer's or Parent's equityholders is required to approve this Agreement (and the Ancillary Documents to which Buyer and/or Parent is or will be a party) or for Buyer and/or Parent to consummate the transactions contemplated hereby or thereby. This Agreement has been (and the Ancillary Documents to which Buyer and/or Parent is or will be a party will be at or prior to the Closing) duly and validly executed and delivered by Buyer and/or Parent and constitutes (or will constitute when executed) a valid, legal and binding agreement of Buyer and/or Parent, as applicable, (assuming that this Agreement has been, and the Ancillary Documents to which Buyer and/or Parent is or will be a party will be, duly authorized, executed and delivered by the other Persons party thereto at or prior to the Closing), enforceable against Buyer and/or Parent, as applicable, in accordance with their respective terms, subject to applicable Enforceability Exception.

(b) The board of directors (or equivalent managing body) of each of Buyer and Parent at a duly held meeting (or by written consent in lieu thereof) has unanimously (i) determined that this Agreement and the transactions contemplated hereby, upon the terms and subject to the conditions set forth herein, are fair to, and in the best interests of, Parent, Buyer and their respective equityholders and (ii) duly and validly authorized and approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby upon the terms and subject to the conditions set forth herein.

Section 5.4 [RESERVED].

Section 5.5 Consents and Approvals; No Violations.

(a) Assuming the truth and accuracy of the representations and warranties set forth in Section 3.5 and Section 4.2, no notices to, filings with or authorizations, consents or approvals of any Governmental Entity are necessary for the execution, delivery or performance by Buyer and/or Parent of this Agreement or the Ancillary Documents to which Buyer and/or Parent is or will be a party or the consummation by Buyer and/or Parent of the transactions contemplated hereby or thereby, except for (i) notices, filings, authorizations, consents or approvals as may be required under the HSR Act (or any similar non-U.S. Laws); (ii) those set forth on Section 5.5 of

the Disclosure Schedules; (iii) those the failure of which to obtain or make would not reasonably be expected to have a material adverse effect on or otherwise prevent or delay the Closing; (iv) compliance with and filings under any liquor Laws that require notice to or consent of a liquor Governmental Entity due to a change in ownership in connection with any and all Permits that pertain to the purchase, sale, and service of liquor; and (v) applicable requirements, if any, of applicable state and federal securities Laws.

(b) Neither the execution, delivery and performance by Buyer and/or Parent of this Agreement nor the execution, delivery and performance by Buyer and/or Parent of the Ancillary Documents to which Buyer and/or Parent is or will be a party nor the consummation by Buyer and/or Parent of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the Governing Documents of Buyer or Parent; (ii) except as set forth on Section 5.5 of the Disclosure Schedules, result in a violation or breach of, conflict with or constitute (with or without due notice or lapse of time or both) a default under or give rise to any right of termination, cancellation, amendment or acceleration or result in the loss of a material benefit or right under, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which any Buyer or Parent is a party or by which Buyer or Parent or any of their respective properties or assets are bound; (iii) violate any order, writ, injunction, decree, Law, statute, rule or regulation of any Governmental Entity having jurisdiction over Buyer or Parent; (iv) except as contemplated by this Agreement or with respect to Permitted Liens or Liens arising under applicable federal and state securities Laws, result in the creation of any Lien upon any of the properties or assets of Buyer or Parent; or (v) require the consent, notice or other action by any Person under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which Buyer or Parent is a party or by which Buyer or Parent or any of its respective properties or assets are bound, except in the case of clauses (ii) through (v), as would not reasonably be expected to prevent or materially delay the Closing or consummation of the transactions contemplated hereby .

Section 5.6 [RESERVED]

Section 5.7 Litigation. As of the date of this Agreement, there is no Action pending or, to Buyer's knowledge, threatened against Buyer, Parent or their respective direct and indirect subsidiaries or any of their respective properties or assets that (i) has had or if determined adversely to any Buyer or Parent would reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement or otherwise prevent or materially delay the Closing or consummation of the transactions contemplated hereby. As of the date of this Agreement, there is no Action pending or, to Buyer's knowledge, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement.

Section 5.8 [RESERVED].

Section 5.9 Brokers. Other than Deutsche Bank Securities Inc., no broker, finder, financial advisor or investment banker is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission or similar payment in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent, Buyer or any of their respective Affiliates for which Seller, any Group Company or any of their respective Affiliates may become liable.

Section 5.10 **Source of Funds**. None of the funds to be paid by Buyer pursuant to this Agreement (i) are derived from, or related to, any activity that is deemed criminal or subject to sanctions under any Law or (ii) will cause Seller, upon receipt of such funds, to be in violation of any Law with respect to money laundering, anti-terrorism or similar criminal Laws.

Section 5.11 **Financing**. Buyer has delivered to Seller duly executed copies of the commitment letters (as amended, supplemented or modified from time to time in compliance with Buyer's obligations under this Agreement, including all term sheets, exhibits, schedules, annexes, supplements and attachments thereto, the "***Commitment Letters***") of (i) Deutsche Bank AG New York Branch, Deutsche Bank Securities Inc., and HPS Investment Partners, LLC, dated as of March 26, 2024 (together with the term sheet and any other exhibits, schedules, annexes and other attachments thereto, and as amended, supplemented, waived, modified, substituted or replaced from time to time after the date hereof, the "***Debt Commitment Letter***"), pursuant to which the Debt Financing Sources have committed to provide debt financing in the aggregate amount of $350.0 million, on the terms and subject to the conditions set forth therein (the "***Debt Financing***") and (ii) Hill Path Capital Partners III LP, dated as of March 26, 2024 (the "***Preferred Stock Commitment Letter***"), pursuant to which Hill Path Capital Partners III LP has committed to fund $150,000,000 for the purchase by HPC III Kaizen LP of preferred equity interests to be issued by Parent in the aggregate amount of $160,000,000 pursuant to the Investment Agreement, dated as of March 26, 2024, among Parent, HPC III Kaizen LP and HPS Investment Partners, LLC (as amended, supplemented or modified from time to time in compliance with Buyer's obligations under this Agreement, including all term sheets, exhibits, schedules, annexes, supplements and attachments thereto, the "***Investment Agreement***"), a duly executed copy of which has been delivered by Buyer to Seller, on the terms and subject to the conditions set forth therein (the "***Preferred Stock Financing***" and, together with the Debt Financing, the "***Transaction Financing***"). As of the date hereof, the Commitment Letters and the Investment Agreement are in full force and effect and, to Buyer's knowledge, constitute the legal, valid and binding obligations of the other parties thereto, enforceable against such Persons in accordance with their terms. The Debt Commitment Letter and the Investment Agreement constitute the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has also delivered to Seller a true, correct and complete copy of any fee letter (which may be redacted as to fee amounts) in connection with the Commitment Letters or the Investment Agreement (a "***Fee Letter***"). As of the date hereof, there are no contracts or arrangements related to the Debt Financing other than the Debt Commitment Letter and the Fee Letters related to the Debt Financing. Except as set forth in the Debt Commitment Letter, (i) there are no contractual conditions precedent to the obligations of the Debt Financing Sources to fund the full amount of the Debt Financing and (ii) there are no contractual contingencies or other provisions under any Contract relating to the Transaction Financing to which Buyer or any of its Affiliates is a party that would permit any Debt Financing Source to: (A) reduce the total amount of the Debt Financing; (B) impose any additional conditions precedent to the availability of the Debt Financing; (C) otherwise restrict or limit the availability of all or any portion of the Debt Financing; or (D) otherwise adversely affect the ability of Buyer to consummate the Transaction Financing on a timely basis (taking into account the anticipated timing of Closing). As of the date hereof, there are no side letters or other contracts or arrangements related to the Preferred Stock Financing other than the Investment Agreement and the related Fee Letters. Except as set forth in the Preferred Stock Commitment Letter, Investment Agreement and the Fee Letters related to the Investment Agreement, (x) there are no contractual conditions precedent to the obligations of the Preferred Stock Financing Sources to fund the full amount of the Preferred Stock Financing and (y) there are no contractual contingencies or other provisions under any Contract relating to the Transaction Financing to which Buyer or any of its Affiliates is a party that would permit any Preferred Stock Financing Source

to: (A) reduce the total amount of the Preferred Stock Financing; (B) impose any additional conditions precedent to the availability of the Preferred Stock Financing; (C) otherwise restrict or limit the availability of all or any portion of the Preferred Stock Financing; or (D) otherwise adversely affect the ability of Buyer to consummate the Transaction Financing on a timely basis (taking into account the anticipated timing of Closing). As of the date hereof, (1) none of the Commitment Letters, the Investment Agreement or the Fee Letters has been amended or modified, (2) to the Buyer's knowledge, no such amendment or modification is contemplated, and (3) the respective commitments set forth in the Commitment Letters have not been withdrawn or rescinded in any respect. Buyer has fully paid, or caused to be fully paid, any and all commitment or other fees which are due and payable on or prior to the date hereof pursuant to the terms of the Commitment Letters, the Investment Agreement and any related Fee Letter. At the Closing, Buyer will have sufficient funds available to pay all obligations of Buyer under this Agreement including pursuant to Section 2.3(a) and all out-of-pocket costs and expenses of Buyer arising from the Transaction Financing. As of the date hereof, to the extent this Agreement must be in a form acceptable to any party to a Commitment Letter, such party has approved this Agreement. For the avoidance of doubt, the each of Parent and Buyer affirms and agrees that obtaining of the Transaction Financing is not a condition to the Closing and that the Buyer has sufficient cash on hand, binding commitments or other sources of immediately available funds to enable it to make payment of all obligations of Buyer under this Agreement including pursuant to Section 2.3(a) and all out-of-pocket costs and expenses of Buyer arising from the Transaction Financing.

Section 5.12 Acquisition of Shares for Investment. Buyer has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its purchase of the Shares. Buyer confirms that it can bear the economic risk of its investment in the Shares and can afford to lose its entire investment in the Shares. Buyer is acquiring the Shares for investment and not with a view toward or for sale in connection with any distribution thereof or with any present intention of distributing or selling such Shares. Buyer agrees that the Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without compliance with applicable United States prospectus and registration requirements, except pursuant to an exemption therefrom under applicable state and federal securities Laws.

Section 5.13 Solvency. Immediately after giving effect to the transactions contemplated hereby, assuming the accuracy of the representations and warranties in Article 3 and Article 4 and the Company's and Seller's compliance with the covenants to be performed at or prior to the Closing, Buyer and each of the Group Companies (a) will be solvent (in that both the fair value of its assets will not be less than the sum of its debts (including all debts, whether or not reflected in a balance sheet prepared in accordance with U.S. GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed)) and that the present fair saleable value of its assets will not be less than the amount required to pay its probable liability on its debts as they become due ; (b) will have adequate capital with which to engage in its business; and (c) will not have incurred and does not plan to incur debts beyond its ability to pay as they become absolute and matured. Buyer and each of the Group Companies are not party to, and do not contemplate or plan to enter into, any other transaction to transfer assets that would result in Buyer not being solvent or with the intent to hinder, delay or defraud present or future creditors of Buyer or any of the Group Companies.

Section 5.14 Pending Transactions. None of Parent, Buyer or any of their respective Affiliates is party to any transaction pending or contemplated to acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other

manner, any Person or portion thereof, or otherwise acquire or agree to acquire any assets, where the entering into of a definitive agreement relating to or the consummation of such acquisition, merger or consolidation would reasonably be expected to (a) impose any material delay in the obtaining of, or materially increase the risk of not obtaining, any authorizations, consents, orders, declarations or approvals of any Governmental Entity necessary to consummate the transactions contemplated hereby or in any Ancillary Document or the expiration or termination of any applicable waiting period; (b) materially increase the risk of any Governmental Entity entering a writ, decree, judgment, injunction or other order prohibiting the consummation of the transactions contemplated hereby or in any Ancillary Document; or (c) materially delay the consummation of the transactions contemplated hereby or in any Ancillary Document.

Section 5.15 Employees. Buyer does not currently plan or contemplate any material changes in the terms and conditions of employment of any employees of any Group Company, or any facility closings, reductions in force, or terminations of employees of any Group Company that, in the aggregate, would require notice under the WARN Act.

Section 5.16 Acknowledgments and Representations by Buyer.

(a) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 5 (AS QUALIFIED BY THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULES), NONE OF PARENT, BUYEROR ANY OTHER PERSON HAS MADE OR MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER WRITTEN OR ORAL, ON BEHALF OF PARENT, BUYER, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING PARENT OR BUYER FURNISHED OR MADE AVAILABLE TO SELLER AND ITS REPRESENTATIVES OR AS TO THE FUTURE REVENUE, PROFITABILITY OR SUCCESS OF PARENT, BUYER OR THE GROUP COMPANIES, OR ANY REPRESENTATION OR WARRANTY ARISING FROM STATUTE OR OTHERWISE IN LAW.

(b) EACH OF PARENT AND BUYER ACKNOWLEDGES AND AGREES THAT IT (I) IS AN INFORMED AND SOPHISTICATED BUYER WITH SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT IT IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF BUYER'S PURCHASE OF THE SHARES, AND THAT IT HAS ENGAGED EXPERT ADVISORS EXPERIENCED IN THE EVALUATION AND PURCHASE OF COMPANIES SUCH AS THE COMPANY; (II) HAS CONDUCTED ITS OWN INDEPENDENT REVIEW AND ANALYSIS OF THE COMPANY AND HAS REQUESTED, RECEIVED AND EVALUATED SUCH DOCUMENTS, INFORMATION AND OTHER MATERIAL AND ASKED SUCH QUESTIONS OF THE COMPANY AS IT HAS DEEMED NECESSARY TO ENABLE IT TO MAKE AN INFORMED AND INTELLIGENT DECISION AND, BASED THEREON, HAS FORMED A JUDGMENT CONCERNING THE BUSINESS, ASSETS, CONDITION, OPERATIONS AND PROSPECTS OF THE GROUP COMPANIES AND THE EXECUTION, DELIVERY AND PERFORMANCE OF THIS AGREEMENT AND THE ANCILLARY DOCUMENTS AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY; (III) HAS BEEN (AND ITS REPRESENTATIVES HAVE BEEN) FURNISHED WITH OR GIVEN FULL ACCESS TO SUCH INFORMATION ABOUT THE

GROUP COMPANIES AND THEIR RESPECTIVE BUSINESSES AND OPERATIONS AS IT AND ITS REPRESENTATIVES AND ADVISORS HAVE REQUESTED; (IV) HAS HAD (AND ITS REPRESENTATIVES HAVE HAD) SUCH TIME AS IT DEEMS NECESSARY AND APPROPRIATE TO FULLY AND COMPLETELY REVIEW AND ANALYZE SUCH DOCUMENTS, INFORMATION AND OTHER MATERIALS PROVIDED; (V) HAS BEEN PROVIDED AN OPPORTUNITY TO ASK QUESTIONS OF THE COMPANY WITH RESPECT TO SUCH DOCUMENTS, INFORMATION AND OTHER MATERIALS AND HAS RECEIVED SATISFACTORY ANSWERS TO SUCH QUESTIONS; AND (VI) HAS BEEN (AND ITS REPRESENTATIVES HAVE BEEN) GIVEN ACCESS TO THE KEY EMPLOYEES, DOCUMENTS AND FACILITIES OF THE GROUP COMPANIES AND THE OPPORTUNITY TO INSPECT THE CONDITION OF ASSETS AND PROPERTIES OF THE GROUP COMPANIES.

(c) IN ENTERING INTO THIS AGREEMENT, EACH OF PARENT AND BUYER HAS RELIED SOLELY UPON ITS OWN AND ITS REPRESENTATIVES' INVESTIGATION AND ANALYSIS AND THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE ANCILLARY DOCUMENTS (AS QUALIFIED BY THE DISCLOSURE SCHEDULES), AND EACH OF PARENT AND BUYER ACKNOWLEDGES THE DISCLAIMER AND LIMITATIONS SET FORTH IN SECTION 3.20. IN FURTHERANCE OF THE FOREGOING, EACH OF PARENT AND BUYER ACKNOWLEDGES THAT, OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE ANCILLARY DOCUMENTS (AS QUALIFIED BY THE DISCLOSURE SCHEDULES), NONE OF THE GROUP COMPANIES, SELLER OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, EQUITYHOLDERS, AGENTS OR REPRESENTATIVES MAKES OR HAS MADE, AND EACH OF PARENT AND BUYER HAS NOT RELIED ON, ANY REPRESENTATION OR WARRANTY (CONTRACTUALLY, LEGALLY OR OTHERWISE), EITHER EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY OF THE INFORMATION PROVIDED OR MADE AVAILABLE TO PARENT, BUYER OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES, LENDERS OR AFFILIATES PRIOR TO THE EXECUTION OF THIS AGREEMENT; *PROVIDED*, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO MODIFY OR ALTER ANY PARTY'S RIGHTS OR OBLIGATIONS IN THE CASE OF FRAUD.

ARTICLE 6
COVENANTS

Section 6.1 Conduct of Business of the Group Companies. Except as may be otherwise expressly provided by this Agreement, from and after the date hereof until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company shall, and shall cause each other Group Company to:

(a) except as consented to in writing by Buyer (which consent shall not be unreasonably delayed, conditioned or withheld) or to the extent required by applicable Laws, conduct its business in the ordinary course of business of the Group Companies (including with respect to the preparation of audited and unaudited financial statements) and use commercially

reasonable efforts to (i) preserve substantially intact their business organization and assets; (ii) preserve the current relationships of the Group Companies with suppliers with which the Group Companies have significant business relations; and (iii) keep and maintain their assets and properties in good repair and normal operating condition, wear and tear excepted; and

(b) without limiting the generality of the foregoing, except as consented to in writing by Buyer (which consent shall not be unreasonably delayed, conditioned or withheld), not:

(i) amend any material provision of its Governing Documents or any other provision in a manner that would reasonably be expected to adversely affect Buyer;

(ii) (A) split, combine, subdivide or reclassify any of its capital stock or other equity interests or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other equity interests or (B) amend the terms of, repurchase, redeem or otherwise acquire, or permit any of its Subsidiaries to repurchase, redeem or otherwise acquire, directly or indirectly, any of its capital stock or other equity securities or any capital stock or other equity securities of its Subsidiaries;

(iii) authorize for issuance, issue, sell, pledge, deliver or agree or commit to issue, sell, pledge or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock of any class or any other securities (including Indebtedness having the right to vote) or equity equivalents (including stock or equity appreciation rights) or amend in any respect any of the terms of any such securities or equity equivalents outstanding on the date hereof;

(iv) declare, set aside, make or pay any non-cash dividends or other non-cash distributions (whether in stock, property or otherwise) with respect to any of its capital stock or equity interests, as applicable (other than dividends or distributions between wholly owned Group Companies);

(v) make any material change in its policies with respect to the payment of accounts payable or accrued expenses or the collection of the accounts receivable or other receivables, including any acceleration or deferral of the payment or collection thereof;

(vi) (A) make any material change in its accounting, auditing or tax methods, principles, practices or elections, except as required as a result of a change in Law or U.S. GAAP (including as a result of ASC 842) or as required by any Governmental Entity after the date hereof, or (B) revalue any assets of the Group Companies, including inventory or accounts receivable write-downs, except to the extent reflected in Net Working Capital;

(vii) (A) except in the ordinary course of business of the Group Companies sell, license, lease, transfer, assign, encumber, abandon or otherwise dispose of any of its properties or assets (tangible or intangible), other than the sale or other disposal of obsolete or worn-out equipment and the license or abandonment of Intellectual Property Rights that are no longer used in the business of the Group Companies or (B) mortgage, pledge or impose any Lien upon any portion of its properties or assets, in each case, other than Permitted Liens and Liens required in connection with the Agreement;

(viii) (A) make any investment or acquisition, in a single transaction or a series of related transactions, including by purchase of stock or securities, contributions to capital, property transfers, merger or purchase of all or substantially all or any portion of the property or assets of any Person; (B) merge or consolidate with any Person; or (C) liquidate, dissolve or effect a recapitalization, restructuring or reorganization in any form of transaction;

(ix) except as may be required by applicable Law or contract, materially amend or modify any written employment contract in effect as of the date of this Agreement or any Employee Benefit Plan, or increase the compensation and/or benefits provided to or under any contract for the employment of any employee or officer of the Group Companies receiving an annual base salary in excess of $50,000 (except for any such contract that can be terminated by the Group Companies without cause and without incurring severance, termination compensation, or similar obligations);

(x) incur any indebtedness for borrowed money other than (A) pursuant to the Credit Agreement and (B) indebtedness for borrowed money that is incurred under an instrument that will be repaid in full at or prior to the Closing;

(xi) enter into or materially amend any transaction with a Related Party that would be binding after Closing;

(xii) materially amend or breach, or accelerate, enter into or renew or terminate (except for any termination upon expiration or renewal in accordance with the terms of such Material Contract or Real Property Lease) any Material Contract or any Real Property Lease, or otherwise waive, release or assign any material rights, claims or benefits of any Group Company thereunder;

(xiii) make or obligate itself to make any purchase or series of related purchases in excess of $50,000 (it being understood that (w) purchases pursuant to commitments entered into prior to the date hereof will not be limited hereby, (x) individual orders or purchases by or for the benefit of (1) different Group Companies, or, (2) in the instance of multiple restaurant locations owned by a single Group Company, different restaurant locations, from the same vendor will not be aggregated as a single purchase for this purpose and (y) individual orders or purchases by or for the benefit a (1) single Group Company, or, (2) in the instance of multiple restaurant locations owned by a single Group Company, a single restaurant location, from a single vendor made on the same day will be aggregated for this purpose but (z) individual orders or purchases by or for the benefit of (1) a single Group Company or, (2) in the instance of multiple restaurant locations owned by a single Group Company, a single restaurant location, from a single vendor made at least two (2) Business Days apart will not be aggregated for this purpose); *provided*, that any action or omission by any Group Company that is otherwise specifically addressed by any other provision of this Section 6.1(b) shall not be restricted by, or require consent of Buyer under, this Section 6.1(b)(xiii);

(xiv) make any material change in the manner in which the Group Companies generally extend discounts or credits to customers;

(xv) make, change or revoke any Tax election, adopt or change any Tax accounting method or period, amend any Tax Return, or settle or compromise any Tax liability or any audits or other administrative actions or claims or proceedings with regard to any Taxes or Tax Returns of any Group Company, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, file any Tax Return other than on a basis consistent with past practice (unless otherwise required by applicable Law) or enter into any closing agreement, in each case, to the extent that any of the foregoing actions could reasonably be expected to have an adverse impact on Buyer or any Group Company with respect to a taxable period beginning after the Closing Date;

(xvi) settle or compromise any Action; or

(xvii) agree, whether orally or in writing, to do any of the foregoing.

(c) Notwithstanding anything to the contrary contained in this Section 6.1, (i) this Section 6.1 shall not prohibit any Group Company from taking actions or omitting from taking actions in response to COVID-19 or any COVID-19 Measures; and (ii) no such action or omission shall be deemed to constitute a breach of this Section 6.1 or serve as a basis for termination of this Agreement under Article 9 or assertion that any condition to closing under Article 7 has not been satisfied.

Section 6.2 Corporate Ratification. Prior to Closing, Seller shall cooperate reasonably and in good faith with Buyer, and use its commercially reasonable efforts to have executed and delivered to Buyer documents prepared by Buyer and in customary form, or prepared by a Group Company or its attorneys and in the possession of the Group Companies on the date of this Agreement, to ratify or otherwise correct or approve material omissions or errors in the corporate records of any Group Companies related to the initial organization or formation, or the equity ownership of, any Group Companies, to the extent identified by Buyer as requiring ratification, correction or approval.

Section 6.3 Access to Information. From and after the date hereof until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, upon reasonable notice, and subject to the last sentence of this Section 6.3, the Company shall, and shall cause the other Group Companies to, provide to Buyer and its authorized representatives during normal business hours, upon reasonable advance written notice, reasonable access to all books, records, properties, assets, personnel and facilities of the Group Companies in a manner so as to not unreasonably interfere with the normal business operations of the Group Companies for the sole purpose of consummating the transactions contemplated hereby; *provided*, that after the date hereof and prior to the Closing Date, Buyer shall be entitled to meetings with the Company's senior management at the request of Buyer, on the subject of updates to the Company's financial condition (with the Company's Chief Executive Officer permitted to attend any such meeting in which he is asked to participate by telephone or video conference if requested by the Company's Chief Executive Officer); *provided further,* that neither Buyer nor its authorized representatives shall have any right to conduct any environmental testing, sampling or invasive analyses without Seller's written consent (which consent may be denied or conditioned in Seller's sole and absolute discretion); *provided further*, that the foregoing shall not require the provision to Buyer or any of its authorized representatives of (a) information (i) if doing so would violate any Law, fiduciary duty or contract to or by which Seller or any of its Affiliates (including the Group Companies) is subject or bound; (ii) if it reasonably determined that doing so could result in the loss of the ability to successfully assert attorney-client and work product privileges; or (iii) if Seller, the

Company or any of its Affiliates, on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties in any Action and such information is reasonably pertinent thereto; or (b) information relating to Taxes or Tax Returns other than information relating to the Group Companies. All of such information shall be treated as " Confidential Information" pursuant to the terms of the Confidentiality Agreement, the provisions of which are by this reference hereby incorporated herein. Parent agrees that it shall be bound by the Confidentiality Agreement to the same extent as Buyer.

Section 6.4 Efforts to Consummate.

(a) Subject to the terms and conditions of this Agreement (including Section 6.4(e)), each Party shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or desirable under Law to consummate and make effective the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Entity all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents; (ii) obtaining any required consents, approvals or authorizations under the HSR Act (or any similar non-U.S. Laws); and (iii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Entity, in each case, that are necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement (collectively, the " ***Regulatory Approvals***").

(b) Subject to the terms and conditions of this Agreement (including Section 6.4(e)), each of the Parties shall, and shall cause their respective Affiliates to, (i) make or cause to be made all filings required of each of them or any of their respective Affiliates under the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and within ten (10) Business Days after the date hereof, (ii) make or cause to be made all filings required or advisable of each of them or any of their respective Affiliates under any non-U.S. Laws similar to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable, (iii) use reasonable best efforts to comply at the earliest practicable date with any request under the HSR Act (or similar non-U.S. Laws) for additional information, documents or other materials received by each of them or any of their respective Affiliates from any Governmental Entity in respect of such filings or such transactions and (iv) cooperate with each other in connection with any such filing and in connection with resolving any investigation or other inquiry of any Governmental Entity under the HSR Act (or similar non-U.S. Laws) with respect to any such filing or any such transaction.

(c) Each Party shall use its reasonable best efforts to furnish to the other Parties all information required for any application or other filing to be made pursuant to the HSR Act (or similar non-U.S. Laws) or other regulatory Laws in connection with the transactions contemplated by this Agreement. Each of Parent and Buyer will advise Seller promptly (and in any event within two (2) Business Days prior to communicating such agreements with any Governmental Entity) of any understandings, undertakings or agreements (oral or written) that Parent or Buyer proposes to make or enter into with any Governmental Entity in connection with the transactions contemplated by this Agreement. Each Party shall promptly inform the other Parties of any oral communication with, and provide copies of written communications with, any Governmental Entity regarding any such filing or any such transaction. No Party shall independently participate

in any meeting with any Governmental Entity in respect of any such filing or any investigation or other inquiry with respect to the transactions contemplated by this Agreement without giving the other Parties prior notice of the meeting and, to the extent permitted by such Governmental Entity, the opportunity to attend or participate. Subject to applicable Law, the Parties will consult and cooperate with each other in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Party relating to proceedings under the HSR Act (or similar non-U.S. Laws) or other regulatory Laws with respect to the transactions contemplated hereby. Each Party shall have the right to (i) review and approve in advance, with such approvals not to be unreasonably withheld or delayed, all filings with any Governmental Entity to be made jointly in connection with the transactions contemplated by this Agreement and (ii) review and comment on in advance, with such comments to be considered by the filing Party in good faith, all filings with any Governmental Entity to be made by the other Parties in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, any Party may, as it deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other Parties under this Section 6.4 as "outside counsel only." Such materials and the information contained therein shall be given only to the outside counsel of the receiving Party, and the receiving Party shall cause such outside counsel not to disclose such materials or information to any employees, officers, directors or other representatives of the receiving Party, unless express written permission is obtained in advance from the source of the materials. Notwithstanding anything to the contrary set forth herein, nothing in this Agreement shall require any Party to provide to any other Party any information or materials that are sensitive personally identifiable information or legally privileged.

(d) Subject to the terms and conditions of this Agreement (including Section 6.4(e)), each Party shall use its reasonable best efforts to promptly resolve such objections, if any, as may be asserted by any Governmental Entity with respect to the transactions contemplated by this Agreement under the HSR Act (or similar non-U.S. Laws) so as to enable Closing as promptly as practicable but, in any event, no later than the Outside Date; provided, however, that if any Action is instituted challenging any transaction contemplated by this Agreement as in violation of the HSR Act (or similar non-U.S. Laws) or any other Antitrust Law, neither Buyer nor Parent shall have any obligation or duty to contest and resist any such Action or seek to have vacated, lifted, reversed or overturned any writ, decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, limits or restricts the consummation of the transactions contemplated by this Agreement. None of the Parties shall stay, toll, or extend any applicable waiting period under the HSR Act (or similar non-U.S. Laws), or pull or refile any filing made under the HSR Act (or similar non-U.S. Laws) without the advance written agreement of the other Parties, which shall not be unreasonably withheld, delayed or conditioned.

(e) Each of Parent and Buyer further agrees that it shall, and shall cause its respective Affiliates to, use commercially reasonable efforts to obtain any necessary Regulatory Approval, including under the HSR Act (or similar non-U.S. Laws), or otherwise to the extent required to satisfy the conditions set forth in Section 7.1, Section 7.2 or Section 7.3, as applicable, and to try to avoid the commencement of any Action by any Governmental Entity seeking, or the entry of, any writ, decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that would result in, or to have lifted, vacated, reversed or terminated, any writ, decree, judgment, injunction or other order, whether temporary, preliminary or permanent, issued by any

Governmental Entity or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement; provided, that, for the avoidance of doubt, neither Buyer nor Parent has any obligation or duty to take or cause to be taken any of the following actions to obtain any necessary Regulatory Approval, including under the HSR Act (or similar non-U.S. Laws): (i) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, the sale, divestiture, transfer, license or other disposition (including by licensing any Intellectual Property Rights) of any assets or businesses of the Group Companies, Parent, Buyer or any of their respective Affiliates (including equity interests held by Parent, Buyer or any of their respective Affiliates in entities with assets or businesses); (ii) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, behavioral limitations on any assets or businesses of the Group Companies, Parent, Buyer or any of their respective Affiliates (including equity interests held by Parent, Buyer or any of their respective Affiliates in entities with assets or businesses); (iii) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, the termination, modification, transfer or other action with respect to any existing relationships and contractual rights and obligations of the Group Companies, Parent, Buyer or any of their respective Affiliates; (iv) otherwise offer to take or offer to commit to take any action that it is capable of taking and, if the offer is accepted, take or commit to take such action, that limits or affects its freedom of action; and (v) in the event that any writ, decree, judgment, injunction or other order, whether temporary, preliminary or permanent, issued by any Governmental Entity is entered or becomes reasonably foreseeable to be entered in any Action that would make consummation of the transactions contemplated by this Agreement unlawful or that would prevent or delay consummation of the transactions contemplated by this Agreement, take any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clauses (i), (ii), (iii) and (iv) above) necessary to vacate, modify or suspend such writ, decree, judgment, injunction or other order.

(f) Whether or not the Closing occurs, each of Buyer and Seller shall be responsible for the payment of 50% of all applicable filing fees under the HSR Act and all non-U.S. Laws similar to the HSR Act, and each of Buyer and Seller shall be responsible for the payment of legal and consulting fees of such Party and its Affiliates.

Section 6.5 Exclusive Dealing. During the period from the date of this Agreement through the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller and the Company shall not take and shall cause the other Group Companies not to take, nor shall any of their Affiliates, officers, directors, managers, members, partners, executive employees, representatives, consultants, financial advisors, attorneys, accountants or other agents take, any action directly or indirectly to solicit, initiate or engage in discussions or negotiations with or provide any information to or enter into any agreement with any Person (other than Parent, Buyer and/or any of their respective Affiliates, officers, directors, employees, representatives, consultants, financial advisors, financing sources, attorneys, accountants and other agents) concerning any purchase of any of the Company's equity securities or any merger, sale of all, or substantially all, of its assets outside of the ordinary course of business of the Group Companies or similar transaction involving or relating to the Group Companies, other than assets sold in the ordinary course of business of the Group Companies (each such transaction, a "***Competing Transaction***"). Notwithstanding the foregoing, (i) each of Parent and Buyer hereby acknowledges that, prior to the date of this Agreement, Seller and the Company has provided

information related to the Group Companies and has afforded access to, and engaged in discussions with, other Persons in connection with a proposed Competing Transaction and that such information, access and discussions could reasonably enable another Person to form a basis for Competing Transaction without any breach of this Section 6.5 and (ii) Seller and the Company may respond to any unsolicited proposal regarding a Competing Transaction by indicating, without identifying Parent, Buyer or any of their respective Affiliates by name or otherwise, that each of Seller and the Company is subject to an exclusivity agreement and is unable to provide any information related to the Group Companies or entertain any proposals or offers or engage in any negotiations or discussions concerning a Competing Transaction for as long as this Agreement remains in effect.

Section 6.6 Contact with Suppliers and Other Business Relations. During the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, each of Parent and Buyer hereby agrees that it is not authorized to and shall not (and shall not permit any of its employees, agents, representatives or Affiliates to) contact any employee, supplier, distributor or other material business relation of Seller or any Group Company regarding any Group Company, its business or the transactions contemplated by this Agreement without the prior written consent of Seller (which may be given, conditioned or withheld in Seller's sole and absolute discretion).

Section 6.7 Indemnification; Directors' and Officers' Insurance.

(a) Buyer agrees that the Group Companies' Governing Documents shall continue to contain provisions no less favorable with respect to indemnification and exculpation than those that are now existing in favor of the directors, managers, officers, employees and agents of each Group Company, as provided in each such Group Company's Governing Documents or any other indemnification agreements or arrangements to which a Group Company is subject that is in existence as of the date hereof, which provisions shall survive the Closing and shall not be amended, repealed or otherwise modified for a period of at least six (6) years after the Closing Date in any manner that would adversely affect the rights thereunder of any Persons who were directors, managers, officers, employees or agents of the Group Companies prior to or as of immediately prior to Closing (the "***D&O Indemnitees***") unless such modification is required by applicable Law, it being the intent of the Parties that the D&O Indemnitees will continue to be entitled to such exculpation and indemnification to the fullest extent permitted by applicable Law. In addition to the other rights provided for in this Section 6.7(a) and not in limitation thereof, from and after the Closing, Buyer will cause the Group Companies (each member, a "***D&O Indemnifying Party***") for a period of six (6) years after the Closing Date, (i) to the fullest extent permitted by applicable Law, to indemnify and hold harmless (and release from any liability in favor of Buyer and the Group Companies) the D&O Indemnitees from and against all D&O Expenses (as defined below) and all Losses, claims, damages, judgments or amounts paid in settlement (collectively, "***D&O Costs***") in respect of any threatened, pending or completed Action, whether criminal, civil, administrative or investigative, based on or arising from or relating to the fact that such Person is or was a director, manager, officer, employee or agent of any Group Company arising out of acts or omissions occurring at or prior to the Closing (including in respect of acts or omissions in connection with this Agreement and the transactions contemplated thereby) (a "***D&O Claim***") and (ii) to advance (or reimburse, if requested by a D&O Indemnitee) to such D&O Indemnitees all D&O Expenses incurred in connection with any D&O Claim (including in circumstances where the D&O Indemnifying Party has assumed the defense of such claim) within

ten (10) Business Days after receipt of reasonably detailed statements therefor; *provided*, *however*, that (A) the Person to whom D&O Expenses are to be advanced pursuant to the preceding clause (ii) provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification and (B) no such indemnification or advancement shall be payable in respect of any liabilities arising out of the willful misconduct, fraud or bad faith of any of the D&O Indemnitees. For the purposes of this Section 6.7(a), "***D&O Expenses***" will include reasonable out-of-pocket attorneys' and other fees, costs, charges and expenses paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or participate in, any D&O Claim, but will exclude Losses, judgments and amounts paid in settlement (which items are included in the definition of D&O Costs).

(b) Contemporaneously with the Closing, the Parties shall cause the Company to, and the Company shall, purchase and maintain in effect beginning on the Closing Date and for a period of six (6) years thereafter without any lapses in coverage, (i) a "tail" policy providing directors' and officers' liability insurance coverage with respect to matters occurring prior to the Closing and (ii) "run-off" coverage as provided by the Group Companies' respective fiduciary and employee benefit policies, in each case, covering those Persons who are covered on the date hereof by such policies and with terms, conditions, retentions and limits of liability that are no less advantageous than the coverage provided under the Group Companies' existing policies (collectively, the "***Tail Policy***"). The Parties acknowledge and agree that the Tail Policy and the indemnification obligations of the Group Companies referenced in clause (a) above are the first source of recovery for such insured persons in respect of all matters occurring prior to the Closing.

(c) The directors, managers, officers, employees and agents of the Group Companies entitled to indemnification, liability limitation, exculpation and insurance set forth in this Section 6.7 are intended to be third-party beneficiaries of this Section 6.7.

(d) At and after the Closing, Buyer shall not, and shall cause the Group Companies not to, take any action that would have the effect of limiting the aggregate amount of insurance coverage required to be maintained for the Persons referred to in Section 6.7(b). If Buyer, any Group Company, any Subsidiary thereof or any of its or their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person in one or a series of related transactions, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Buyer, any Group Company, any Subsidiary thereof or any of its or their respective successors or assigns shall assume the obligations set forth in this Section 6.7; *provided*, Buyer, any Group Company, any Subsidiary thereof and any of its or their respective successors or assigns shall not be relieved from such obligation. In addition, Buyer, any Group Company, any Subsidiary thereof and any of its or their respective successors or assigns shall not distribute, sell, transfer or otherwise dispose of any of its assets in a manner that would reasonably be expected to render Buyer, any Group Company, any Subsidiary thereof and any of its or their respective successors or assigns unable to satisfy its obligations under this Section 6.7.

Section 6.8 Documents and Information. After the Closing Date, Buyer shall, and shall cause the Group Companies to, until the seventh (7^{th}) anniversary of the Closing Date, retain all books,

records and other documents pertaining to the business of the Group Companies in existence on the Closing Date and make the same available for inspection and copying by Seller during normal business hours of the Group Companies, as applicable, upon reasonable request and upon reasonable notice.

Section 6.9 Employee Benefits Matters.

(a) During the period beginning on the Closing Date and ending no earlier than the first (1st) anniversary of the Closing Date, Buyer shall provide employees of the Group Companies who continue to be employed by the Group Companies (the "***Continuing Employees***"), (i) base salary or wage level and target bonus opportunities no less than those provided to the Continuing Employees immediately prior to the Closing Date and (ii) employee benefits (excluding equity incentive arrangements, deferred compensation, and defined benefit pensions) at least as favorable in the aggregate with those employee benefits provided to the Continuing Employees immediately prior to the Closing Date. Nothing contained in this Agreement shall be deemed to impair the right of Buyer to determine which employees, if any, will continue to be employed.

(b) Buyer further agrees that, from and after the Closing Date, to the extent Buyer does not continue the Group Companies' Employee Benefit Plans, Buyer shall and shall cause the Group Companies to credit each Continuing Employee for any service with the Group Companies or any of their predecessors earned prior to the Closing Date to the extent such service was recognized for corresponding benefits under the analogous Employee Benefit Plan for eligibility, vesting and benefit accrual and severance benefit determinations under any benefit or compensation plan, program, agreement or arrangement that may be sponsored, established or maintained by Buyer or the Group Companies or any of their Affiliates on or after the Closing Date (the "***New Plans***") in which any Continuing Employee is eligible to participate, except (i) where such credit would result in a duplication of benefits, (ii) to the extent that prior service is not credited to employees of Buyer or its Affiliates under any such New Plans, but only if employees of Buyer or its Affiliates are generally eligible to participate under such New Plan, or (iii) with respect to benefit accruals under qualified and nonqualified defined benefit pension plans.

(c) In addition, Buyer shall use commercially reasonable efforts to (i) cause to be waived all pre-existing condition exclusions and actively at work requirements and similar limitations, eligibility waiting periods and evidence of insurability requirements under any New Plans to the extent waived or satisfied by an employee under the analogous Employee Benefit Plan as of the Closing Date, and (ii) provide each Continuing Employee with credit for any deductible, co-insurance and covered out-of-pocket expenses paid during the portion of the applicable plan year on or before the Closing Date by any employee (or covered dependent thereof) of the Group Companies for purposes of satisfying the corresponding deductible, coinsurance and maximum out-of-pocket provisions after the Closing Date under any applicable New Plan to the extent coverage under such New Plan replaces coverage under the comparable Employee Benefit Plan in which the Continuing Employees participated immediately before such replacement. Buyer agrees that Buyer and the Group Companies shall be solely responsible for satisfying the continuation coverage requirements of Section 4980B of the Code for all individuals who are "M&A qualified beneficiaries" as such term is defined in Treasury Regulation Section 54.4980B -9.

(d) The Group Company sponsoring the Benihana Restaurant Employees 401(k) Plan and the Benihana 401(k) Plan (the "***401(k) Plans***") shall adopt written resolutions and shall take or cause to be taken all other actions necessary and appropriate to terminate the 401(k) Plans effective no later than one (1) day immediately preceding the Closing Date. The Seller shall deliver to the Buyer, no later than one (1) day immediately preceding the Closing Date, copies of all documentation (including appropriate board resolutions and plan amendments) to: (i) terminate each 401(k) Plan; (ii) cease all contributions to each 401(k) Plan; and (iii) fully vest the account balance of each participant in each 401(k) Plan, such termination, cessation of contributions and vesting to be effective no later than one (1) day prior to the Closing Date but contingent on the occurrence of the Closing. Such documentation shall be subject to the approval (not to be unreasonably withheld) of the Buyer. Buyer shall cause the applicable 401(k) plan that is a New Plan to accept rollover contributions from the 401(k) Plan(s) for Continuing Employees and shall use commercially reasonable efforts to provide for the rollover of outstanding loan amounts under the 401(k) Plan(s) for Continuing Employees to the applicable New Plan.

(e) Nothing contained in this Section 6.9, expressed or implied, shall (i) be treated as the establishment, amendment or modification of any Employee Benefit Plan, or constitute a limitation on rights to amend, modify, merge or terminate any Employee Benefit Plan; (ii) give any current or former employee, director or other service provider of any Group Company (including any beneficiary or dependent thereof), or any labor organization, union, works council, employee association, trade union, other similar employee representative or employee committee or plan, any third-party beneficiary or other rights under this Agreement; or (iii) obligate Buyer or any of its Affiliates to (A) maintain any particular Employee Benefit Plan or (B) retain the employment or services of any employee, director or other service provider.

Section 6.10 No Public Disclosure. No press release or public announcement related to this Agreement, the Ancillary Documents or the transactions contemplated hereby or thereby shall be issued or made by any Party (nor will Seller permit any of its advisors or Affiliates to do any thereof) without the prior written approval of Buyer; *provided*, that disclosures may be made in connection with the enforcement of any right or remedy relating to this Agreement, the Ancillary Documents or the transactions contemplated thereby. Parent may issue a press release or public announcement, and file such announcement, a description of the Agreement, and a copy of the Agreement with the SEC, provided that Seller shall be afforded a reasonable opportunity to review and comment on such press release, announcement or communication prior to its issuance, distribution or publication and Parent considers in good faith any proposed comments made by Seller. Notwithstanding anything to the contrary contained in this Section 6.10, Seller or any of its Affiliates may make customary disclosures, including the key economic terms of the transactions contemplated in this Agreement and the return realized as a result thereof, to its current or prospective investors, Affiliates, partners, members, financing sources, counsel, accountants, consultants and other advisors; *provided*, that, in each case, such disclosure (i) has a valid business purpose and is effected in a manner consistent with customary practices, (ii) is made only to parties with an obligation to maintain the confidentiality of any information that would reasonably be considered material non-public information of Parent (assuming the Closing had occurred), and (iii) is not inconsistent with disclosures made by Parent. Following the Closing, Angelo, Gordon & Co., L.P. and its Affiliates may use and reference the names of each Group Company and the associated marks and logos for the sole purpose of describing the historical relationship of the Group Companies with Angelo, Gordon & Co., L.P. and its Affiliates (including on their respective web sites), and the Company hereby grants (and agrees to cause each Group Company to grant) to Angelo,

Gordon & Co., L.P. and its Affiliates a royalty-free, non-exclusive right and license to use each Group Company's names and the associated marks and logos for such purpose.

Section 6.11 Tax Matters.

(a) Preparation and Filing of Tax Returns. Except as otherwise provided in this Section 6.11, Buyer shall be responsible for preparing and filing all Tax Returns of the Group Companies that are due after the Closing Date. Such Tax Returns shall include the Transaction Tax Deductions as deductions for the Group Companies for the taxable period ending on the Closing Date to the extent Buyer reasonably determines that such deductions are includible on a "more likely than not" basis.

(b) Tax Refunds.

(i) Seller shall be entitled, without duplication, to any refund of Income Taxes from a Governmental Entity received by the Group Companies after the Closing Date for a Pre-Closing Tax Period, including any interest paid thereon by the applicable Governmental Entity, but only to the extent such refunds or interest are actually paid in cash to the Group Companies or result in an immediate reduction in the amount of a cash Tax liability owed by the Group Companies (a "***Seller Tax Refund***"); *provided, however*, that there shall be excluded from the definition of Seller Tax Refund all amounts (A) that arise as a result of a carryback of a loss or other Tax benefit from a Tax period or portion thereof beginning after the Closing Date, (B) payable to a third party pursuant to any contract entered into prior to the Closing, (C) taken into account in the determination of the Cash Purchase Price, including as an accrual in the computation of Net Working Capital or Indebtedness, and (D) that Buyer reasonably determines constitute Buyer Unrecovered Pre-Closing Tax Liabilities. "***Buyer Unrecovered Pre-Closing Tax Liabilities***" means (a) Losses incurred or expected to be incurred by Buyer or any Group Company attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.15, and (b) Taxes incurred or expected to be incurred by Buyer or any Group Company for any Pre-Closing Tax Period that are unpaid as of the Closing Date and that are otherwise not borne by Seller by having been taken into account in the determination of the Cash Purchase Price, including as an accrual in the computation of Net Working Capital or Indebtedness.

(ii) Buyer shall pursue and take all commercially reasonable actions reasonably necessary to promptly obtain any refunds to which Seller would be entitled under Section 6.11(b)(i), including using any applicable "quick refund" claim procedures, but only to the extent that taking such actions could not reasonably be expected to adversely affect Buyer.

(iii) Within fifteen (15) days after Buyer, any Group Company or any of their Affiliates receive a Seller Tax Refund, Buyer or the Company shall, or shall cause the applicable Group Company or Affiliate to, deliver and pay over, by wire transfer of immediately available funds, the amount of such Seller Tax Refund to Seller (net of any reasonable expenses or Taxes incurred by Buyer or a Group Company in connection therewith).

(iv) If the amount of any Seller Tax Refund is subsequently determined to be less than the amount of the Seller Tax Refund that was paid to Seller pursuant to this Section 6.11(b), including as a result of a disallowance by a Governmental Entity, Seller shall promptly

repay to Buyer or the Group Company, as applicable, the amount of such excess Seller Tax Refund (including any interest or penalties in respect of such disallowed amount that are owed to any Governmental Entity).

(v) None of Buyer or the Company shall, or shall permit any Group Company or any of their Affiliates to, intentionally forfeit, fail to collect or otherwise minimize or delay any payment pursuant to Section 6.11(b)(iii).

(c) Straddle Period Allocation. For purposes of this Agreement, in the case of any Tax (or Tax refund or credit) imposed with respect to a Straddle Period, the portion of such Tax (or Tax refund or credit) that is allocable to the portion of such Straddle Period ending on the Closing Date shall be (i) in the case of any Taxes other than Income Taxes, Taxes based on receipts, sales or payments and other Taxes that are transaction based, be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period prior to and ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period and (ii) in the case of any Income Taxes and Taxes based on receipts, sales or payments and other Taxes that are transaction based (or Income Tax refunds or credits), be deemed equal to the amount that would be payable if the relevant Straddle Period ended on the Closing Date, *provided*, for the avoidance of doubt, that all permitted allowances, credits, exemptions and deductions that are normally computed on the basis of an entire year period (such as depreciation and amortization deductions) shall accrue on a daily basis and shall be allocated between the pre-Closing portion of the Straddle Period and the post-Closing portion of the Straddle Period in proportion to the number of days in each such period.

(d) Tax Claims; Cooperation.

(i) Except with respect to the W-2 Matter, which is addressed in Section 6.11(e), Buyer shall control any audit, examination, claim or other proceeding with respect to Taxes of the Group Companies made by any Governmental Entity (a "***Tax Claim***"); *provided*, that, with respect to any Tax Claim that, if successful, could materially reduce the amount of any payment pursuant to Section 6.11(b), (A) Buyer shall provide written notice of such Tax Claim to Seller within ten (10) days of Buyer's receipt of notice thereof (provided that no delay in providing such notice shall increase or accelerate Buyer's obligations pursuant to this Section 6.11 except to the extent Seller is materially prejudiced thereby); and (B) Seller shall have the right to review and comment upon material submissions to Governmental Entities made in the course of such Tax Claim at its own expense, and neither Buyer nor any Group Company shall settle or otherwise dispose of any such Tax Claim without the consent of Seller, which shall not be unreasonably withheld, conditioned or delayed.

(ii) The Parties shall reasonably cooperate, and shall cause their respective affiliates, officers, employees, agents, auditors and other representatives reasonably to cooperate, in preparing and filing all Tax Returns and resolving all disputes and audits with respect to Taxes, including maintaining and making available to each other all records necessary in connection with Taxes and in resolving all disputes and audits relating to Taxes with respect to all taxable periods.

(e) W-2 Matter

(i) From and after the Closing, solely to the extent of and from the W-2 Indemnity Escrow Funds, the Seller shall indemnify Buyer and its Affiliates (including the Group Companies) and its and their respective officers, directors, employees, successors and assigns (the "***Indemnified Parties***") against, and hold the Indemnified Parties harmless from, all Losses (including fees, penalties and interest) actually incurred by any of the Indemnified Parties arising out of, attributable to, resulting from, or in respect of the W-2 Matter.

(ii) Notwithstanding anything to the contrary in this Agreement, Seller shall, at its own expense, control all conduct, preparation of, filing for, procedures undertaken or participation in any tax proceedings by any Group Company with any Governmental Entity in connection with the W-2 Matter prior to and after Closing, and Seller shall use commercially reasonable efforts to resolve the W-2 Matter as promptly as reasonably possible after Closing, and the Company and Buyer shall, and shall cause their respective subsidiaries, to use commercially reasonable efforts to undertake any procedures and, subject to Section 6.11(e)(iii) below, enter into any settlement determined and approved by Seller in good faith with respect thereto. Without limiting the foregoing, Buyer, Seller and the Group Companies shall furnish to each other such information and reasonable assistance as any of them reasonably requests in connection with the any of the aforementioned tax proceedings, and instruct their respective officers, employees and advisors (including legal, financial and accounting) to reasonably cooperate with each other and its advisors in connection with the foregoing, including by making themselves and any relevant information and documentation reasonably available.

(iii) None of Seller, Buyer nor any Group Company shall settle or otherwise dispose of the W-2 Matter without the consent of each other, which shall not be unreasonably withheld, conditioned or delayed, and Seller, Buyer and each Group Company shall keep the others promptly informed of the status of such efforts (including with respect to any correspondence or discussions with the relevant Governmental Authorities) and Seller and the applicable Group Company shall consider in good faith any reasonable comments Buyer provides regarding such efforts; provided that no consent of Buyer or the Company Group shall be required, and the Company Group shall take the Seller's direction with respect to, any settlement or other disposition of the W-2 Matter, so long as (x) the sum of the amount payable to any Governmental Entity with respect thereto, plus all associated costs and expenses that are reimbursable by Seller hereunder, does not exceed the W-2 Indemnity Escrow Funds, and (y) such settlement or other disposition does not contemplate any material obligations on any Group Company with respect to its conduct after Closing, except to comply with applicable law and make the applicable cash payment or payments.

(iv) The indemnification obligation of Seller pursuant to Section 6.11(e)(i) shall terminate and be of no further force or effect upon the date that the last of all payments owed to any Governmental Entity in respect of the W-2 Matter is received and acknowledged by such Governmental Entity. On such date, Buyer and Seller shall promptly (and in any event within three Business Days) deliver joint written instructions to the Escrow Agent to release any remaining W-2 Indemnity Escrow Funds to Seller.

(v) Notwithstanding anything to the contrary herein or otherwise (A) the indemnification obligation contemplated by this Section 6.11(e) shall be satisfied solely from the W-2 Indemnity Escrow Funds, pursuant to a joint written instruction executed by the Parties, (B) Seller's aggregate liability for indemnification pursuant to Section 6.11(e) shall not exceed the W-2 Indemnity Escrow Amount, (C) in no event shall any Indemnified Party have direct recourse against Seller for indemnification obligations pursuant to this Section 6.11(e), and (D) in no event shall any Indemnified Party be entitled to recover against Seller or any of its Affiliates in respect of the W-2 Matter pursuant to any other Section of this Agreement.

(vi) The parties agree to treat any payment made to Buyer or any Group Company pursuant to this Section 6.11(e) as an adjustment to the purchase price for all Tax purposes, except as otherwise required by Law.

(f) Closing Tax Period. The Parties shall, to the extent permitted or required under applicable Law, treat the Closing Date as the last day of the taxable period of the Group Companies for all Tax purposes.

(g) Withholding Certificate. Prior to or at the Closing, the Company shall deliver a certificate in a form and substance required under Treasury Regulations Section 1.1445-2(b). Prior to or at the Closing, Seller shall deliver to Buyer a duly executed IRS Form W-9.

(h) Disputes. If any dispute arises concerning Tax matters or payments under this Section 6.11 and such dispute cannot be resolved through good-faith negotiations among the Parties, such dispute shall be resolved promptly by the Accounting Firm in accordance with the principles of Section 2.3(b)(ii).

(i) Provisions Governing Tax Matters. The provisions of this Section 6.11 shall govern with respect to Tax matters.

Section 6.12 Consents. Buyer acknowledges that certain consents to and notices in respect of the transactions contemplated by this Agreement may be required from or to parties to contracts, leases, licenses or other agreements to which the Group Companies are a party (including the contracts set forth on Section 3.5 of the Disclosure Schedules). During the period between the date hereof and the Closing Date, the Company will use its commercially reasonable efforts, and Buyer will cooperate with the Company, to obtain the consent of the landlords under the Real Property Leases set forth on Schedule 6.12 and to submit the required notices to state and local liquor licensing authorities set forth on Schedule 6.12; *provided*, *however*, that (i) neither Seller nor any Group Company shall be required to pay any amounts to any third-party (other than normal and customary legal fees and expenses and miscellaneous administrative fees) or agree to any material amendments to such Real Property Leases as a condition of obtaining such consents, (ii) the failure of the Company to actually obtain any such consents shall not, in and of itself, result in, or have the effect of, a failure of any of the conditions to closing set forth in Article 7 and (iii) the notice process with respect to liquor licenses shall be subject to Buyer's reasonable direction.

Section 6.13 Transfer Taxes. All Transfer Taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller. The Parties shall cooperate in timely filing any Tax Return or

other document with respect to such Transfer Taxes as may be required to comply with the provisions of applicable Laws relating to Transfer Taxes.

Section 6.14 R&W Insurance. Buyer acknowledges and represents that, as of the date hereof, Buyer has obtained a binding R&W Insurance Policy in the forms attached hereto as Exhibit B-1 and Exhibit B-2, respectively. The R&W Insurance Policy shall provide that the insurer shall waive any right of subrogation against Seller, its Affiliates or any of its or their direct or indirect, past or present, shareholder, member, partner, employee, director or officer (or the functional equivalent of any such position) (each, a "***Seller Party***") in connection with this Agreement and the transactions contemplated hereby, except in the case of Fraud. Buyer shall not amend the R&W Insurance Policy in any manner adverse to any Seller Party without Seller's express prior written consent.

Section 6.15 Financing. Buyer shall use its commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to arrange the Transaction Financing on the terms and conditions not materially less favorable to the Company than the terms and conditions set forth in the Commitment Letters and the Investment Agreement on or prior to the Closing. Such efforts include using commercially reasonable efforts to (a) comply with and maintain in effect the Commitment Letters and the Investment Agreement in accordance with their terms and conditions until the Transaction Financing is consummated, (b) work with the Company to satisfy on a timely basis all conditions and covenants in the Commitment Letters, the Investment Agreement and the Transaction Financing, (c) promptly negotiate the Debt Financing on the terms and conditions contemplated by the Debt Commitment Letter so that the definitive agreements for the Debt Financing are available to be entered into by the Company no later than the Closing Date, (d) consummate the Transaction Financing at or prior to the Closing, including causing the Financing Sources to fund the Transaction Financing at the Closing and (e) enforce its rights pursuant to the Commitment Letters and the Investment Agreement; provided, however, that if funds in the amount set forth in the Commitment Letters become, or are reasonably anticipated by Buyer to become, unavailable to Buyer on the terms and conditions set forth therein, Buyer shall use its commercially reasonable efforts to obtain, promptly following the occurrence of such event (and in no event later than the Closing), such funds to the extent available on terms and conditions no less favorable in the aggregate to Buyer than as set forth in the Commitment Letters and the Investment Agreement (the "***Alternate Financing***"). Notwithstanding the foregoing, except as contemplated by the Debt Commitment Letter, in no event shall any of the definitive financing agreements in respect of the Debt Financing (i) reduce (or would reasonably be expected to have the effect of reducing) the aggregate dollar amount of the Debt Financing provided for in the Debt Commitment Letter; (ii) expand the conditions or other contingencies relating to the receipt or funding of the Debt Financing beyond those expressly set forth in the Debt Commitment Letter, materially amend or modify any of such conditions or other contingencies in a manner adverse to Buyer or the Company or impose any new or additional condition or other contingency relating to the receipt or funding of the Debt Financing; or (iii) contain terms (other than those terms expressly set forth in the Debt Commitment Letter) that would delay the Closing Date. Each of Parent and Buyer acknowledges and agrees that none of the obtaining of the Transaction Financing or any Alternate Financing or Seller or any of its Affiliates having or maintaining any available cash balances is a condition to the Closing, and reaffirm the obligations of Parent and Buyer to consummate the transactions contemplated hereunder irrespective and independently of the availability of the Transaction Financing or any permitted Alternate Financing, or Seller or any of its Affiliates having or maintaining any available cash balances.

Section 6.16 Cooperation with Financing.

(a) The Parties acknowledge that Buyer will attempt to arrange the Transaction Financing for the purpose of funding the transactions contemplated by this Agreement and until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Group Companies shall, at Buyer's sole cost and expense and at Buyer's reasonable request, use reasonable best efforts to cooperate with Buyer in connection with the arrangement of the Transaction Financing as may be customary for similar financings, by exercising reasonable best efforts to (i) make available to Buyer and the Preferred Stock Financing Sources and the Debt Financing Sources (collectively the "***Transaction Financing Sources***") such financial and other pertinent information regarding the Group Companies as may be reasonably requested by Buyer and the Transaction Financing Sources; (ii) make available the Company's officers with appropriate seniority and expertise to participate at reasonable times and upon reasonable notice in a reasonable number of meetings (it being understood that such meetings may occur telephonically or by videoconferencing) with prospective lenders or investors; (iii) reasonably cooperate with Buyer's preparation of customary materials for customary marketing and syndication materials required in connection with the Transaction Financing; (iv) reasonably cooperate with Buyer's preparation of definitive financing documentation and the schedules and exhibits thereto, in each case, customarily required to be delivered under such definitive financing documentation; (v) obtain documents and deliver notices reasonably requested by the Buyer or the Debt Financing Sources relating to the prepayment, redemption or termination of the existing Indebtedness and the release of related Liens and related guarantees (including the Payoff Letters) and (vi) provide to Buyer and the Transaction Financing Sources all reasonably necessary documentation and other information required by regulatory authorities in the United States under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, in each case that is requested ten (10) days prior to the Closing. The Company consents to the customary and reasonable use of the Company's logos solely in connection with the Transaction Financing; *provided*, that such logos are used solely in a manner that is not intended, or reasonably likely, to harm or disparage any Group Company or any of their respective Affiliates or the reputation or goodwill of any Group Company or any of their respective Affiliates. Notwithstanding anything in this Agreement to the contrary, (A) none of the Group Companies or any of their respective Affiliates, or any of their respective directors, officers, employees or agents, shall be required to execute or enter into any certificate, instrument, agreement or other document in connection with the Transaction Financing which will be effective prior to the Closing; (B) nothing herein shall require cooperation or other actions or efforts on the part of any Group Company or any of their Affiliates, or any of their respective directors, officers, employees or agents, in connection with the Transaction Financing to the extent it would interfere unreasonably or materially with the business or operations of the Group Companies or any of their respective Affiliates; (C) no Group Company or any of their respective Affiliates, or any of their respective directors, officers, employees or agents, will be required to pay any commitment or other similar fee or to incur any other liability or obligation prior to the Closing; (D) nothing herein shall require the board of directors or similar governing body of any Group Company, prior to the Effective Time, to adopt resolutions approving the agreements, documents or instruments pursuant to which the Transaction Financing is made; (E) none of the Group Companies or any of their respective Affiliates, or any of their respective directors, officers, employees or agents, shall be required to pay any commitment or other similar fee or make any other payment (other than reasonable out-of-pocket costs, subject to reimbursement by Buyer) or incur any other liability or provide or agree

to provide any indemnity in connection with any Transaction Financing or any of the foregoing that would be effective prior to the Closing; (F) nothing herein shall require cooperation that would cause any director, manager, officer, employee, stockholder, or equityholder of any Group Company to incur any personal liability; (G) nothing herein shall require cooperation that would require providing access to or disclosing information that any Group Company determines would jeopardize any legal privilege of the Group Company; (H) nothing herein shall require cooperation that would violate, or result in the waiver of any benefit under, any material agreement (and not entered into in contemplation hereof), this Agreement, or any applicable Law to which any Group Company is a party or to which any Group Company is subject; (I) no Group Company shall be required to provide, and Buyer shall be solely responsible for, (x) the preparation of pro forma financial information, including pro forma cost savings, synergies, capitalization or other pro forma adjustments desired to be incorporated into any pro forma financial information, (y) any description of all or any component of the Transaction Financing, or (z) projections, risk factors or other forward-looking statements relating to all or any component of the Transaction Financing; and (J) any documentation, agreement, instrument or certificate required to be delivered by any Group Company or its directors, officers or employees at or after the Closing in connection with the Transaction Financing shall be authorized by the governing body of the Group Company and executed and delivered by its directors, officers or employees, in each case, immediately after giving effect to the Closing and it shall be the sole responsibility of Buyer to procure such authorization, execution and delivery.

(b) All information provided or made available by or on behalf of any Group Company pursuant to this Section 6.16 shall be kept confidential in accordance with the Confidentiality Agreement.

(c) Buyer shall (i) reimburse the Group Companies on an as-incurred basis for any out-of-pocket expenses incurred or otherwise payable by the Group Companies in connection with their cooperation pursuant to this Section 6.16 and (ii) indemnify and hold harmless each of the Group Companies and their respective equityholders, parent entities, agents and other representatives from and against any and all liabilities suffered or incurred by them in connection with the Transaction Financing and the performance of their respective obligations under this Section 6.16 and any information utilized in connection therewith.

(d) Notwithstanding anything contained in this Section 6.16 or any other provision in this Agreement, each of Parent and Buyer acknowledges and agrees that (i) consummation of the transactions contemplated by this Agreement is not subject to, or otherwise conditioned on, Buyer obtaining financing for or related to any of the transactions contemplated by this Agreement (including all or any portion of the Transaction Financing) and (ii) the condition set forth in Section 7.2(d) as it applies to the obligations under this Section 6.16 shall be deemed satisfied unless (A) the Transaction Financing has not been obtained because the Company has knowingly, willfully and materially breached its obligations under this Section 6.16, (B) Buyer has notified the Company and Seller of such breach in writing, detailing proposed reasonable steps that comply with this Section 6.16 in order to cure such breach, with a reasonably sufficient amount of time to afford the Company with a reasonable opportunity to cure such breach and (C) the Company has not taken such steps or the Company has not otherwise cured such breach prior to the Outside Date and such breach has been the proximate and direct cause of the Transaction Financing not being obtained.

Section 6.17 Release. Effective as of the Closing, Seller, on behalf of itself and its successors and assignees, hereby fully, irrevocably and unconditionally releases, acquits and forever discharges (a) the Parent Group Companies, the Group Companies, and its and their respective current and former managers, directors, officers, employees, successors and assignees, and (b) Parent's equityholders and their Representatives (in each case, solely in each of their respective capacities as such) (the "***Seller Released Parties***"), from any and all manner of actions, causes of actions, claims, obligations, demands, damages, costs, expenses, compensation or other relief, whether known or unknown, suspected or unsuspected, fixed or contingent, direct, derivative, vicarious or otherwise, whether based in contract, tort, or other legal, statutory, or equitable theory of recovery, arising out of or relating to the Group Companies prior to the Closing (the "***Seller Released Claims***"). Notwithstanding anything to the contrary in this Agreement, the Seller Released Claims shall not include any (i) claims or rights arising under or related to this Agreement or the Ancillary Documents, (ii) any claim which cannot be waived by applicable Law, or (iii) claims for Fraud, criminal activity or Willful Breach. From and after the Closing Date, Seller, on behalf of itself and its successors and assignees, agrees to not, directly or indirectly (including in a derivative proceeding), assert any claim or demand or commence, institute or maintain, or cause to be commenced, instituted, or maintained, or knowingly facilitate or assist any other party in commencing, instituting or maintaining, any Action of any kind against any of the Seller Released Parties based upon or with respect to any Seller Released Claims.

Section 6.18 Section 280G Parachute Payments. Seller shall use reasonable best efforts to (a) calculate the amount of any potential "parachute payment" (as defined in Section 280G(b)(2) of the Code) that is or might be payable or provided to any "disqualified individual" (as defined in Section 280G(c) of the Code) with respect to the change in ownership or effective control of the Company arising from the purchase and sale of the Shares pursuant to this Agreement; (b) to the extent necessary, obtain from each such disqualified individual a waiver of payments or benefits such that, after giving effect to all waivers, neither any Group Company nor Buyer will have made or provided, nor will be required to make or provide, any payment or benefit that would be nondeductible under Section 280G(a) of the Code or that would be subject to excise tax under Section 4999 of the Code (such waived payments with respect to any individual, the "***Section 280G Waived Payments***"); (c) prepare adequate disclosure for stockholder approval (the "***Section 280G Disclosure***") of all Section 280G Waived Payments in accordance with the terms of Section 280G(b)(5)(B) of the Code; (d) solicit the approval of the appropriate stockholders in accordance with the terms of Section 280G(b)(5)(B) of the Code; and (e) take all other reasonable actions necessary or appropriate in support of the foregoing. Seller shall provide to Buyer in advance (i) documentation regarding the determination of the amount of Section 280G Waived Payments and (ii) drafts of all waivers, disclosure documents, stockholder consent forms and other relevant documents relating to the waiver and stockholder approval. The Company shall consider in good faith any comments made by Buyer in connection with the foregoing, including with respect to such calculations and documents prior to obtaining the waivers and soliciting the vote.

ARTICLE 7
CONDITIONS TO CLOSING

Section 7.1 Conditions to the Obligations of Seller, the Company and Buyer. The obligations of Seller, the Company, Parent and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permitted by Law, waiver by Seller and Buyer) of the following conditions:

(a) any applicable waiting period under the HSR Act (or similar non-U.S. Law) relating to the transactions contemplated by this Agreement shall have expired or been terminated; and

(b) no statute, rule, regulation, executive order, decree, temporary restraining order, preliminary or permanent injunction, order or other Law issued by any court of competent jurisdiction or other Governmental Entity or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect; *provided*, *however*, that each of Buyer, the Company and Seller shall have complied with its respective obligations under Section 6.4 in order to prevent the entry of any such injunction or other order or the commencement of any such proceeding or lawsuit and to appeal as promptly as possible any injunction or other order that may be entered.

Section 7.2 Other Conditions to the Obligations of Buyer. The obligations of Parent and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permitted by Law, waiver by Parent and Buyer) of the following further conditions:

(a) each of the Fundamental Representations, if qualified by materiality, shall be true and correct in all respects and, if not so qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing, except for (x) such representations and warranties that are expressly stated to be made on and as of a specific earlier date, in which case as of such earlier date, and (y) the representations and warranties in Section 3.2 hereof, which shall be true and correct in all respects (excluding any failures to be so true and correct that are of a de minimis nature or effect) on and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing;

(b) each of the remaining representations and warranties set forth in Article 3 (except for Section 3.7, read for purposes of this Section 7.2 without regard to any materiality or Company Material Adverse Effect qualification or any similar qualification) and Article 4 shall be true and correct, in each case, on and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing (except for such representations and warranties that are expressly stated to be made on and as of a specific earlier date, in which case as of such earlier date), except where the failure of such representations or warranties contained in Article 3 and Article 4 to be true and correct would not reasonably be expected to have a Company Material Adverse Effect;

(c) there shall not have occurred any Effect that, individually or in the aggregate, with or without the lapse of time, has had or could reasonably be expected to result in a Company Material Adverse Effect;

(d) Seller and the Company shall have performed and complied in all material respects with all covenants required to be performed or complied with by Seller and the Company under this Agreement on or prior to the Closing Date;

(e) prior to or at the Closing, Seller shall have delivered to Buyer the following closing documents:

(i) a certificate of an authorized officer of Seller, dated as of the Closing Date, to the effect that the conditions specified in Section 7.2(a), Section 7.2(b), Section 7.2(c) and Section 7.2(d) have been satisfied;

(ii) stock certificates duly endorsed in blank or registered in the name of Buyer or its nominee together with stock powers or other instruments of transfer duly executed by Seller and endorsed in blank in proper form for transfer with respect to the Shares to be sold by Seller to Buyer pursuant to this Agreement;

(iii) a certified copy of the resolutions of Seller's board of directors (or other governing body) authorizing the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby;

(iv) a written resignation, in customary form, from each director of the Company and each director or manager (if a natural person), as applicable, of each of the other Group Companies, with respect to such Person's director and manager positions, duly executed thereby; provided that with respect to any employee of the Group Companies, such resignation shall not be deemed a termination or resignation of employment, resignation by such employee without "Good Reason" or any similar designation, or otherwise adversely affect any such employee's entitlement to compensation and/or severance;

(v) a certified copy of the resolutions of the Company's board of directors (or other governing body) authorizing the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby; and

(vi) the Payoff Letters;

(f) Escrow Agreement shall have been duly executed and delivered by Seller and the Escrow Agent to Buyer; and

(g) The Deferred Compensation Plan shall have been terminated and all benefits thereunder paid in full.

Section 7.3 Other Conditions to the Obligations of Seller and the Company. The obligations of Seller and the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permitted by Law, waiver by Seller and the Company) of the following further conditions:

(a) each of the Parent and Buyer Fundamental Representations, if qualified by materiality, shall be true and correct in all respects and, if not so qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the date of this Agreement and

at and as of the Closing as though made at and as of the Closing, except for such representations and warranties that are expressly stated to be made on and as of a specific earlier date, in which case as of such earlier date;

(b) each of the remaining representations and warranties set forth in Article 5 shall be true and correct, in each case, on and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing (except for such representations and warranties that are expressly stated to be made on and as of a specific earlier date, in which case as of such earlier date), except where the failure of such representations or warranties contained in Article 5 to be true and correct would not reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby;

(c) Parent and Buyer shall have performed and complied in all material respects with all covenants required to be performed or complied with by them under this Agreement on or prior to the Closing Date;

(d) prior to or at the Closing, Parent and Buyer shall have delivered to Seller the following closing documents:

(i) a certificate of an authorized officer of each of Parent and Buyer, dated as of the Closing Date, to the effect that the conditions specified in Section 7.3(a), Section 7.3(b), Section 7.3(c) and Section 7.3(d) have been satisfied; and

(ii) a certified copy of the resolutions of Parent's board of directors and Buyer's board of directors (or other governing body) authorizing the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby; and

(e) Escrow Agreement shall have been duly executed and delivered by Buyer and the Escrow Agent to Seller.

Section 7.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure was caused by such Party's failure to use commercially reasonable efforts (or such higher standard as may be required by the terms of this Agreement) to cause the Closing to occur, as required by Section 6.4 or any other Section herein.

ARTICLE 8
NO SURVIVAL

Section 8.1 Non-Survival of Representations, Warranties and Covenants. The representations, warranties and covenants of the Parties contained in this Agreement and in any Ancillary Document shall terminate upon consummation of the Closing (it being understood and agreed that none of Seller, the Company, Parent, Buyer or any of their respective Affiliates or their respective representatives or agents shall have any liability for, or recourse under, this Agreement following the consummation of the Closing for any breach of or inaccuracy in any such representation or warranty or any breach or nonfulfillment of any covenant that by its term is required to be performed or fulfilled at or prior to the consummation of the Closing), except that any covenant that by its term is required to be performed after the consummation of the Closing shall survive the consummation of the Closing until fully performed in accordance with its terms. Except as set forth in the immediately following sentence,

each of Parent and Buyer further acknowledges that its only recourse in the event of any breach or inaccuracy of any representation or warranty under this Agreement and in any Ancillary Document shall be pursuant to the R&W Insurance Policy. Nothing in this Agreement shall limit the liability of any Party for Fraud or Willful Breach committed by such Party.

ARTICLE 9
TERMINATION

Section 9.1 Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Buyer and Seller;

(b) by Buyer, if any of the representations or warranties of the Company set forth in Article 3 or the representations and warranties of Seller set forth in Article 4 shall not be true and correct such that the condition to closing set forth in Section 7.2(a) or Section 7.2(b) would not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, if curable, is not cured within thirty (30) days after written notice thereof is delivered to Seller; *provided*, that Buyer shall not have the right to terminate this Agreement pursuant to this Section 9.1(b) if Buyer or Parent is then in material violation or breach of any of its covenants, representations or warranties set forth in this Agreement and such violation or breach would give rise to the failure of a condition set forth in Section 7.3(a), Section 7.3(b) and Section 7.3(c);

(c) by Seller, if any of the representations or warranties of Buyer and Parent set forth in Article 5 shall not be true and correct such that the condition to closing set forth in Section 7.3(a) and Section 7.3(b) would not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, if curable, is not cured within thirty (30) days after written notice thereof is delivered to Buyer; *provided*, that Seller shall not have the right to terminate this Agreement pursuant to this Section 9.1(c) if Seller or the Company is then in material violation or breach of any of its covenants, representations or warranties set forth in this Agreement and such violation or breach would give rise to the failure of a condition set forth in Section 7.2(a), Section 7.2(b) or Section 7.2(d);

(d) by Buyer, if the transactions contemplated by this Agreement have not been consummated on or prior to July 26, 2024 (as may be extended pursuant to Section 10.16(c), the "***Outside Date***"); *provided*, that Buyer shall not have the right to terminate this Agreement pursuant to this Section 9.1(d) if the failure to consummate the transactions contemplated by this Agreement is the result of a breach by Buyer or Parent of its representations, warranties or covenants under this Agreement;

(e) by Seller, if the transactions contemplated by this Agreement have not been consummated on or prior to the Outside Date; *provided*, that Seller shall not have the right to terminate this Agreement pursuant to this Section 9.1(e) the failure to consummate the transactions contemplated by this Agreement is the result of a breach by Seller or of the Company or any of its representations, warranties or covenants under this Agreement; or

(f) by either Buyer or Seller, if any Governmental Entity shall have issued an order, decree, ruling, judgment or injunction or taken any other action permanently enjoining, restraining or otherwise prohibiting the Closing and such order, decree, ruling, judgment or injunction or other action shall have become final and nonappealable; *provided*, that the Party seeking to terminate this Agreement pursuant to this Section 9.1(f) shall have used commercially reasonable efforts to remove such order, decree, ruling, judgment, injunction or action, and such order, decree, ruling, judgment, injunction or action shall not have been principally caused by the breach by such Party of its covenants under this Agreement.

Section 9.2 Notice of Termination. Any Party desiring to terminate this Agreement pursuant to Section 9.1 shall give written notice of such termination to the other Parties to this Agreement.

Section 9.3 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 9.1, this entire Agreement shall forthwith become void (and there shall be no liability or obligation on the part of Parent, Buyer, Seller or the Company or their respective officers, directors or equityholders) with the exception of (i) the second and third sentences in Section 6.3 and the provisions of Section 6.4(e), Section 6.10, Section 6.15, Section 6.16, this Section 9.3 and Article 10, each of which shall remain in full force and effect, survive any termination of this Agreement and remain valid and binding obligations on the applicable Parties, and (ii) any liability of any Party for any Fraud or Willful Breach of this Agreement prior to such termination (which, for the avoidance of doubt, shall be deemed to include any failure by Parent, Buyer, Seller or the Company to consummate the transactions contemplated by this Agreement if it is obligated to do so hereunder). In the case of clause (ii) above, notwithstanding anything to the contrary in this Agreement, each Party shall be entitled to all remedies available (whether in contract, tort, Law, equity or otherwise), including equitable relief (including specific performance, and in each case, without the necessity of proving actual harm or posting a bond or other security), consequential and/or indirect damages, and damages for the benefit of the bargain lost by such Party (taking into consideration relevant matters, including the opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Closing and the time value of money), diminution in value of the Group Companies and the reimbursement of such Party's fees, costs and expenses. The Parties expressly agree that Seller and the Company shall be entitled to petition a court to award money damages in connection with any Fraud or Willful Breach of this Agreement prior to termination, and receive any damages that may be claimed by Seller and/or the Company (including for the benefit of the bargain lost). Nothing herein shall limit or prevent any Party from exercising any rights or remedies it may have under Section 10.16.

ARTICLE 10
MISCELLANEOUS

Section 10.1 Entire Agreement; Assignment. This Agreement, the Ancillary Documents and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement may not be assigned by any Party (whether by operation of Law or otherwise) without the prior written consent of Seller and Buyer. Any attempted assignment of this Agreement not in accordance with the terms of this Section 10.1 shall be void.

Section 10.2 **Notices**. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile (followed by overnight courier), email (followed by overnight courier) or by registered or certified mail (postage prepaid, return receipt requested) to the other Parties as follows:

To Buyer, Parent or to the Company (after the Closing):

The ONE Group Hospitality, Inc.
1624 Market Street, Suite 311
Denver, Colorado 80202
Attention: Chief Executive Officer and Chief Financial Officer
E-mail: LegalNotices@togrp.com

with a copy (which shall not constitute notice) to:

Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, Oregon 97205
Attention: Steven H. Hull
E-mail: steven.hull@stoel.com

To Seller or to the Company (prior to the Closing):

Safflower Holdings LLC
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue
New York, NY 10167
Attention: Syed Alam
E-mail: salam@angelogordon.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
787 7th Ave
New York, NY 10019
Attention: David D'Urso
Telephone: 212-839-6010
Facsimile No: 212-839-5599
Email: ddurso@sidley.com

or to such other address as the Person to whom notice is given may have previously furnished to the other in writing in the manner set forth above.

Section 10.3 **Governing Law**. Except as provided in Section 10.19, this Agreement and any claim, controversy, dispute, cause of action, litigation or other proceeding (whether in contract, tort, Law, equity or otherwise) that may be based upon, arise out of or relate to this Agreement, the transactions contemplated herein, or the negotiation, execution or performance of this Agreement

(including if based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Law of any jurisdiction other than the State of Delaware.

Section 10.4 Fees and Expenses. Except as otherwise set forth in this Agreement, whether or not the Closing occurs or the transactions contemplated hereby are consummated, all fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the Party incurring such fees or expenses; *provided*, that, (a) in the event that the transactions contemplated by this Agreement are consummated, Buyer shall, or shall cause the Group Companies to, pay all Unpaid Seller Expenses at the Closing in accordance with Section 2.3(a)(iv); (b) each of Buyer and Seller shall be responsible for 50% of all fees and expenses of the Escrow Agent in connection with the Escrow Agreement; (c) each of Buyer and Seller shall be responsible for 50% of all policy premium with respect to the Tail Policy referenced in Section 6.7(b); (d) each of Buyer and Seller shall be responsible for 50% of the costs and expenses related to the R&W Insurance Policy, including the total premium, underwriting costs, applicable brokerage commission, Taxes related to such policy and other fees and expenses of such policy (the "***R&W Insurance Costs***"); (e) each of Buyer and Seller shall be responsible for the payment of 50% of all applicable filing fees under the HSR Act and all non-U.S. Laws similar to the HSR Act, and each of Buyer and Seller shall be responsible for the payment of such Party's own legal and consulting fees; and (f) each of Buyer and Seller shall be responsible for 50% of all Transfer Taxes.

Section 10.5 Construction; Interpretation. The term "this Agreement" means this Agreement together with all Schedules and Exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. The headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing or enforcing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party, and no presumption or burden of proof will arise favoring or disfavoring any Person by virtue of its authorship of any provision of this Agreement. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the Schedules and Exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; (iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation"; (v) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if"; and (vi) references to "dollar," "dollars" or "$" shall be to the lawful currency of the United States. To the extent that any documents or other materials were uploaded to the virtual data room maintained by the Company for purposes of the transactions contemplated by this Agreement via Datasite in the file room titled "Project Kaizen" as of 11:59 p.m. on the date that is two (2) Business Days immediately preceding the date hereof (the "***Data Room***"), such documents or other materials shall be deemed "provided" and "made available" (and all similar phrases used herein that mean such) to Buyer and Parent for all purposes of this Agreement. The term "ordinary course of business" means,

with respect to any Person, "ordinary course of business consistent with past practice of such Person and its Subsidiaries (taking into account any and all actions taken or omitted from being taken by such Person and its Subsidiaries in response to COVID-19 or any COVID-19 Measures)".

Section 10.6 Exhibits and Schedules. All Exhibits and Schedules or other documents expressly incorporated into this Agreement (including the Disclosure Schedules) are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement. Any item disclosed in the Disclosure Schedules referenced by a particular section in this Agreement shall be deemed to have been disclosed with respect to every other section in this Agreement if the relevance of such disclosure to such other section is reasonably apparent on its face. The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in the Disclosure Schedules is not intended to imply that such amounts, or higher or lower amounts, or the items so included or other items, are or are not material, and no Party shall use the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy as to whether any obligation, items or matter not described herein or included in the Disclosure Schedules is or is not material for purposes of this Agreement.

Section 10.7 Time of the Essence; Computation of Time. Time is of the essence for each and every provision of this Agreement. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to but excluding" and the word "through" means "to and including." Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a day that is not a Business Day, the Party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day that is a Business Day.

Section 10.8 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and, except as provided in Section 6.7, Section 10.18 and Section 10.19, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 10.9 Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Law, but if any term or other provision of this Agreement is held to be invalid, illegal or unenforceable under applicable Law, all other provisions of this Agreement shall remain in full force and effect 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 determination that any term or other provision of this Agreement is invalid, illegal or unenforceable under applicable Law, 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 greatest extent possible.

Section 10.10 Amendment. Subject to Law, Section 10.11 and Section 10.19, this Agreement may be amended or modified only by a written agreement executed and delivered by Buyer and Seller. This Agreement may not be modified or amended except as provided in the immediately preceding sentence, and any purported amendment by any Party or Parties effected in a manner that does not comply with this Section 10.10 shall be void.

Section 10.11 Waiver.

(a) Seller may waive compliance by Buyer or Parent with any term or provision of this Agreement and by the Company with any term or provision of this Agreement that is required to be performed or complied with after the Closing. Buyer may waive compliance by Seller with any term or provision of this Agreement and by the Company with any term or provision of this Agreement that is required to be performed or complied with prior or upon the Closing.

(b) Any agreement on the part of any Party to any such waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition or a waiver of any other term or condition of this Agreement. The failure of or delay by any Party to assert any of its rights hereunder shall not constitute a waiver of such rights; *provided*, that time is of the essence with respect to each and every provision of this Agreement.

Section 10.12 Counterparts; Electronic Signatures. This Agreement and the Ancillary Documents may be executed in multiple counterparts (including by means of facsimile or other electronic transmission, including.pdf, DocuSign or similar format), each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. This Agreement and the Ancillary Documents entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile, electronic mail in "portable document format" (".pdf") form, or any other electronic transmission, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

Section 10.13 Knowledge. For all purposes of this Agreement, (a) the phrase "to the Company's knowledge," "to the knowledge of the Company," "known by the Company" and any derivations thereof or phrases having similar import thereto shall mean as of the applicable date, the actual knowledge (and shall in no event encompass constructive, imputed or similar concepts of knowledge) of Thomas J. Baldwin, Nicole Thaung, and Cristina Mendoza, none of whom shall have any personal liability or obligations of inquiry regarding such knowledge; and (b) the phrase "to Buyer's knowledge," "to the knowledge of Buyer," "known by Buyer" and any derivations thereof or phrases having similar import thereto shall mean as of the applicable date, the actual knowledge (and shall in no event encompass constructive, imputed or similar concepts of knowledge) of Emanuel Hilairo and Tyler Loy, none of whom shall have any personal liability or obligations of inquiry regarding such knowledge.

Section 10.14 WAIVER OF JURY TRIAL . EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, LITIGATION OR OTHER PROCEEDING (A) ARISING UNDER THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT

ANY SUCH CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

Section 10.15 Jurisdiction and Venue. Except as set forth in Section 10.19, each of the Parties (a) submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) in any claim, controversy, dispute, cause of action, litigation or other proceeding arising out of or relating to this Agreement, any Ancillary Document or any transactions contemplated hereby or thereby; (b) agrees that all such claims, controversies, disputes, causes of action, litigations or other proceedings may be heard and determined in any such court; and (c) agrees not to bring in any other court any such claim, controversy, dispute, cause of action, litigation or other proceeding. Each of the Parties waives any defense of inconvenient forum to the maintenance of any such claim, controversy, dispute, cause of action, litigation or other proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Each Party agrees that service of summons and complaint or any other process that might be served in any such claim, controversy, dispute, cause of action, litigation or other proceeding may be made on such Party by sending or delivering a copy of the process to the Party to be served at the address of the Party and in the manner provided for the giving of notices in Section 10.2. Nothing in this Section 10.15, however, shall affect the right of any Party to serve legal process in any other manner permitted by Law. Each Party agrees that a final, non-appealable judgment in any such claim, controversy, dispute, cause of action, litigation or other proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by Law.

Section 10.16 Specific Performance.

(a) The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy would occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. Seller and Buyer shall be entitled to seek an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which Seller or Buyer are entitled at Law or in equity. The foregoing right shall include the right of each Party to cause the other Party to cause the transactions contemplated by this Agreement to be consummated, in each case, if the conditions set forth in Article 7 have been satisfied or waived by the Party entitled to waive (other than conditions which by their nature cannot be satisfied until the Closing or the Closing Date, but subject to the satisfaction or waiver of those conditions at the Closing or on the Closing Date).

(b) Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at Law or (ii) an award of specific performance is not an appropriate remedy for the applicable breach for any reason at Law or equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement when expressly available pursuant to the terms of this Agreement and to enforce specifically the terms and provisions of this Agreement when expressly available pursuant to the

terms of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction or prove actual harm.

(c) To the extent any Party brings an Action or other similar process to enforce specifically the performance of the terms and provisions of this Agreement (other than an Action or similar process to enforce specifically any provision that expressly survives termination of this Agreement) when expressly available to such Party pursuant to the terms and provisions of this Agreement, the Outside Date shall automatically be extended to (i) the tenth (10th) Business Day following the resolution of such Action or other similar process or (ii) such other time period established by the court presiding over such Action or other similar process, as applicable.

Section 10.17 Waiver of Conflicts and Privileged Information.

(a) Recognizing that Akin Gump Strauss Hauer & Feld LLP and Sidley Austin LLP (collectively, "***Seller Counsel***") have acted as legal counsel to Seller and certain of their Affiliates and the Group Companies prior to the Closing, and that Seller Counsel intends to act as legal counsel to Seller and certain of its Affiliates after the Closing, each of Parent, Buyer and each Group Company hereby agrees that (i) Seller Counsel may represent Seller and/or its Affiliates after the Closing in connection with any dispute, litigation, claim or proceeding arising out of or relating to this Agreement, any Ancillary Documents or the transactions contemplated hereby or thereby, and (ii) even though the interests of Seller and/or its Affiliates may be directly adverse to Parent, Buyer and each Group Company, (A) Parent, Buyer and the Company hereby waive and will not assert (and will cause any of their respective Subsidiaries to waive and not assert) any conflict of interest or any objection arising therefrom or relating thereto, and (B) Parent, Buyer and the Company hereby consents (and will cause any of their respective Subsidiaries to consent) to any such representation.

(b) All communications involving attorney-client confidences between (i) Seller and their Affiliates (including, prior to the Closing, the Group Companies) communicated at any time or (ii) the Group Companies communicated prior to Closing, on the one hand, and Seller Counsel, on the other hand, that in any way relates to this Agreement or the transactions contemplated hereby (including the negotiation, delivery and performance of, or any dispute, litigation, claim or proceeding arising out of or relating to, this Agreement, and any representation, warranty or covenant of any party under this Agreement, the Ancillary Documents, or any related agreement or the matters upon which a representation or warranty is made) ("***Protected Communications***"), in each case, shall be deemed to be attorney-client confidences that belong solely to Seller and their Affiliates (and not any of the Group Companies). Accordingly, Parent, Buyer and the Company agree that, following the Closing, (A) neither Parent, Buyer, the Group Companies nor their Affiliates shall have access to or control of any such Protected Communications, and (B) Parent, Buyer and the Company will not (and will cause each of its Subsidiaries and Affiliates not to), use any Protected Communications remaining in the records of the Group Companies after the Closing in a manner that may be adverse to Seller or any of its Affiliates.

(c) Without limiting the generality of the foregoing, following the Closing, (i) Seller and its Affiliates (and not any of the Group Companies) shall be the sole holders of the attorney-client privilege, and all other evidentiary privilege, with respect to such Protected

Communications, and no Group Company shall be a holder thereof, and no such privilege shall pass to or be claimed by Parent, Buyer, the Group Companies or any of their Affiliates; (ii) Seller and/or its Affiliates will have the exclusive right to control, assert or waive the attorney-client privilege, and all other evidentiary privilege, with respect to such Protected Communications; (iii) Parent, Buyer and the Company will not (and will cause each of its Subsidiaries and Affiliates not to), (A) assert any attorney-client privilege, or any other evidentiary privilege, with respect to any Protected Communication; or (y) take any action which could cause any Protected Communication to cease being a confidential communication or to otherwise lose protection under the attorney-client privilege or any other evidentiary privilege; (iv) in the event of a dispute between Seller or any of its Affiliates, on the one hand, and the Group Companies, on the other hand, arising out of or relating to any matter in which Seller Counsel represented both parties, neither the attorney-client privilege, the expectation of client confidence, nor any right to any other evidentiary privilege will protect from disclosure to Seller or its Affiliates any information or documents developed or shared during the course of Seller Counsel's representation of the Group Companies and Seller; (v) to the extent that files of Seller Counsel in respect of such engagement constitute Protected Communications, only Seller and its Affiliates (and not any of the Group Companies) shall hold property rights in such Protected Communications; and (vi) Seller Counsel shall have no duty whatsoever to reveal or disclose any such Protected Communications to any of the Group Companies by reason of any attorney-client relationship between Seller Counsel and any of the Group Companies or otherwise.

Section 10.18 Non-Recourse. All claims, controversies, disputes, cause of action, litigations or other proceedings (whether in contract, tort, Law, equity or otherwise) that may be based upon, arise out of or relate to this Agreement or the Ancillary Documents, or the negotiation, execution or performance of this Agreement or the Ancillary Documents (including any representation or warranty made in or in connection with this Agreement or the Ancillary Documents or as an inducement to enter into this Agreement or the Ancillary Documents), may be made only against the entities that are expressly identified as Parties thereto. No Person who is not a named party to this Agreement or the Ancillary Documents, including any past, present or future director, officer, employee, incorporator, member, partner, equityholders (including stockholders and option holders), Affiliate, agent, attorney or representative of any named party to this Agreement or the other Ancillary Documents ("***Non-Party Affiliates***"), shall have any liability (whether in contract, tort, Law, equity or otherwise, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or such other Ancillary Document (as the case may be) or for any claim, controversy, dispute, cause of action, litigation or other proceeding based on, in respect of, or by reason of this Agreement or such other Ancillary Document (as the case may be) or the negotiation or execution hereof or thereof; and each Party waives and releases all such liabilities, claims, controversies, disputes, causes of action, litigations or other proceedings against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third-party beneficiaries of this provision of this Agreement.

Section 10.19 Financing Sources. Notwithstanding anything herein to the contrary, the Company, on behalf of itself, and its Subsidiaries, and each of its controlled Affiliates agrees that:

(a) no Debt Financing Source or Preferred Stock Financing Source shall have any liability hereunder (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations, or losses arising under, out of, in connection with, or

related in any manner to this Agreement or based on, in respect of or by reason of this Agreement or its negotiation, execution, performance, or breach (provided that nothing in this Section 10.19 shall limit the liability or obligations of (i) the Debt Financing Sources under the Debt Commitment Letter or any definitive agreements with respect to the Debt Financing or (ii) the Preferred Stock Financing Source under the Preferred Stock Commitment Letter with respect to the Preferred Stock Financing); and

(b) only Buyer (including its permitted successors and assigns under the Debt Commitment Letter or the Preferred Stock Commitment Letter) shall be permitted to bring any claim against a Debt Financing Source or a Preferred Stock Financing Source for failing to satisfy any obligation to fund the Debt Financing or the Preferred Stock Financing pursuant to the terms of the Debt Commitment Letter or the Preferred Stock Commitment Letter.

No amendment or waiver of this Section 10.19 (or the definitions used herein) shall be effective to the extent such amendment is materially adverse to the Debt Financing Sources or the Preferred Stock Financing Sources, as applicable, without the prior written consent of the Debt Financing Sources or the Preferred Stock Financing Sources, as applicable. If, notwithstanding the foregoing waivers, any claim is brought against the Debt Financing Sources or the Preferred Stock Financing Sources, such claim will be governed by New York law (without giving effect to any conflicts of law principles that would result in the application of the laws of another state) and subject to the jurisdiction limitations and waiver of jury trial provisions set forth in the Debt Commitment Letter or the Preferred Stock Commitment Letter as if fully set forth herein. The Debt Financing Sources and the Preferred Stock Financing Sources are intended third party beneficiaries of this Section 10.19. This Section 10.19 shall, with respect to the matters referenced herein, supersede any provision of this Agreement to the contrary.

Section 10.20 Parent Guarantee.

(a) Parent hereby irrevocably and unconditionally guarantees to Seller the full and punctual payment and performance by Buyer of all of the covenants, agreements, undertakings, obligations, terms, conditions and indemnities to be performed, observed and/or paid by Buyer and any of its successors and assigns (the "***Guaranteed Obligations***") under this Agreement. This guarantee is an absolute, unconditional, irrevocable and continuing undertaking of the full and punctual payment and performance of all of the Guaranteed Obligations and is in no way conditioned upon any requirement that Seller first attempt to collect any amounts owing by Buyer from Buyer or any other Person. If Buyer shall default in the due and punctual performance of the Guaranteed Obligations, including the full and timely payment of any amount due and payable pursuant to the Guaranteed Obligations, Parent will forthwith make full payment of any amount due with respect to the Guaranteed obligations at its sole cost and expense.

(b) The liabilities and Guaranteed Obligations of Parent pursuant to this Agreement are, except as set forth below, unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any acceleration, extension, renewal, settlement, compromise, waiver or release in respect of the Guaranteed Obligations by operation of law or otherwise;

(ii) the invalidity or unenforceability, in whole or in part, of any provision of this Agreement (except to the extent such invalidity or unenforceability results in Buyer not being required to perform the Guaranteed Obligations, in which case Parent shall not be required to perform the Guaranteed Obligations under this guarantee);

(iii) any modification or amendment of or supplement to this Agreement (other than an amendment, modification or supplement to this Section 10.20);

(iv) any change in the company existence, structure or ownership of Buyer or any insolvency, bankruptcy, reorganization or other similar proceeding affecting it or its respective assets; or

(v) subject to the next succeeding sentence, any other act, omission to act, delay of any kind by any party to this Agreement or any other Person, or any other circumstance whatsoever that might, but for the provisions of this Section 10.20, constitute a legal or equitable discharge of the Guaranteed Obligations of a surety, other than payment in full.

Notwithstanding any other provision of this Agreement, Buyer and Seller hereby agree that Parent may assert, as a defense to any payment by Parent under this guarantee, any defense to such payment that Buyer may have under the terms of this Agreement, other than defenses arising from bankruptcy, insolvency, reorganization or other similar proceedings affecting Parent or Buyer and other defenses expressly waived hereby.

(c) Parent hereby waives any right, whether legal or equitable, statutory or non-statutory, to require any Person to proceed against or take any action against or pursue any remedy with respect to Buyer or any other Person or make presentment or demand for performance or give any notice of nonperformance before Seller or any other beneficiary of this Agreement may enforce its rights under this Agreement against Buyer.

(d) Parent's Guaranteed Obligations under this Agreement shall remain in full force and effect until the Guaranteed Obligations shall have been paid in full. If at any time any payment by any Person of the Guaranteed Obligations is rescinded or must be otherwise restored or returned, whether upon the insolvency, bankruptcy or reorganization of Buyer or otherwise, Parent's Guaranteed Obligations under this Agreement with respect to such Guaranteed Obligations shall be reinstated at such time as though such Guaranteed Obligations had become due and had not been performed.

* * * * *

IN WITNESS WHEREOF, each of the Parties has caused this Stock Purchase Agreement to be duly executed on its behalf as of the day and year first written above.

SELLER:

SAFFLOWER HOLDINGS LLC

By: /s/Thomas J. Baldwin
Name: Thomas J. Baldwin
Title: Authorized Person

COMPANY:

SAFFLOWER HOLDINGS CORP.

By: /s/Thomas J. Baldwin
Name: Thomas J. Baldwin
Title: President and Chief Executive Officer

BUYER:

TOG KAIZEN ACQUISTION, LLC

By: **The ONE Group, LLC,** its Manager

By: **The ONE Group Hospitality, Inc.**, its Manager

By: /s/ Emanuel Hilario
Name: Emanuel Hilario
Title: President and Chief Executive Officer

PARENT:

THE ONE GROUP HOSPITALITY, INC.

By: /s/ Emanuel Hilario
Name: Emanuel Hilario
Title: President and Chief Executive Officer

SCHEDULE 1.1(c)

PERMITTED LIENS

1. Liens pursuant to that certain Master Services Agreement, dated as of October 18, 2016, by and between First Data Merchant Services LLC and Benihana National Corp., as supplemented by the following:
   a. Bankcard Addendum to Master Services Agreement, dated as of October 18, 2016, by and among First Data Merchant Services LLC, Benihana National Corp., Wells Fargo Bank, N.A. and Citicorp Payment Services Inc.

   b. Amendment No. 1 to Master Services Agreement, dated as of November 18, 2019, by and among First Data Merchant Services LLC, Benihana National Corp., Wells Fargo Bank, N.A. and Citicorp Payment Services Inc.

   c. Clover Service Addendum, dated as of April 3, 2020, by and between Benihana National Corp. and First Data Merchant Services LLC

2. Liens pursuant to the Premium Financing Arrangements

EXHIBIT A

Statement of Net Working Capital

EXHIBIT B-1

Form of Primary Policy

EXHIBIT B-2

Form of Excess Policy

EXHIBIT C

Form of Escrow Agreement

Exhibit 10.2

INVESTMENT AGREEMENT

by and among

THE ONE GROUP HOSPITALITY, INC.,

HPC III KAIZEN LP

and

HPS INVESTMENT PARTNERS, LLC

Dated as of March 26, 2024

NOTE TO EXHIBIT: Certain exhibits and schedules to this Investment Agreement are not filed herewith. The Company agrees to furnish supplementally a copy of any omitted exhibit or schedule to the SEC upon request.

Explanatory Note: The Investment Agreement (the "Agreement") contains representations and warranties by the parties thereto made only for the purposes of the Agreement. The Agreement is filed with this report only to provide investors with information regarding its terms and conditions, and not to provide any other factual information regarding the Company or its business. A party's representations and warranties were made solely for the benefit of the other party or parties and (i) were not intended to be treated as categorical statements of fact, but rather as a way to allocate risk if a representation and warranty proves to be inaccurate; (ii) may have been qualified in the Agreement by disclosures that were made to the other party or parties in connection with the negotiation of the Agreement (provided that any specific facts that contradict the representations and warranties in the Agreement in any material respect have been disclosed); (iii) may apply contract standards of "materiality" that are different from "materiality" under the applicable securities laws; and (iv) were made only as of the date of the Agreement or such other date or dates as may be specified in the Agreement. Accordingly, they should not be relied upon by investors as statements of factual information.

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ARTICLE IV

Representations and Warranties of the Investors

ARTICLE V

Additional Agreements

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INVESTMENT AGREEMENT, dated as of March 26, 2024 (this " Agreement"), by and between The ONE Group Hospitality, Inc., a Delaware corporation (the " Company"), HPC III Kaizen LP, a Delaware limited partnership (together with its successors and any Permitted Affiliate Transferee that becomes a party hereto pursuant to Section 8.03, the " Hill Path Investor"), and HPS Investment Partners, LLC, a Delaware limited liability company (together with its successors and any Permitted Affiliate Transferee that becomes a party hereto pursuant to Section 8.03, the "HPS Investor" and, together with the Hill Path Investor, each an "Investor" and collectively the "Investors").

WHEREAS, the Company, TOG Kaizen Acquisition, LLC, a Delaware limited liability company and a direct or indirect subsidiary of the Company ("Buyer"), Safflower Holdings LLC, a Delaware limited liability company ("Seller"), and Safflower Holdings Corp., a Delaware corporation (the "Target"), are concurrently entering into a Stock Purchase Agreement, dated as of the date hereof (the "Acquisition Agreement") (a copy of which is attached hereto as Exhibit A), pursuant to which, among other things and subject to its terms and conditions, Buyer will acquire 100% of the outstanding equity securities of the Target from Seller (the "Acquisition").

WHEREAS, subject to the terms and conditions set forth herein, at the Closing (as defined below) the Company desires to issue, sell and deliver to the Investors, and the Investors desire to purchase and acquire from the Company, (a) an aggregate of 160,000 shares of the Company's Series A Preferred Stock, par value $0.0001 per share (the " Preferred Stock"), having the designation, preferences, rights, privileges, powers, and terms and conditions, as specified in the form of the Certificate of Designations of Series A Preferred Stock attached hereto as Exhibit B (the " Certificate of Designation"), (b) warrants (the "Penny Warrants") to purchase a number of shares of Common Stock (as defined below) that will represent 5.33% of the fully diluted shares of Common Stock as of immediately prior to the Closing and after giving effect to the issuance of the Penny Warrants, pursuant to the form of warrant agreement hereto as Exhibit C-1 (the "Penny Warrant Agreement") and (c) warrants (the "Market Warrants" and together with the Penny Warrants, the "Warrants" and the Warrants, together with the Preferred Stock, the "Purchased Securities") to purchase, in the aggregate, up to 1,066,667 shares of Common Stock (subject to adjustment in accordance with the terms thereof) pursuant to the form of warrant agreement attached hereto as Exhibit C-2 (the "Market Warrant Agreement" and together with the Penny Warrant Agreement, the "Warrant Agreements").

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to the willingness of the Company to enter into this Agreement, the Hill Path Fund (as defined below) has executed and delivered an equity commitment letter, a copy of which attached hereto as Exhibit D (the "Hill Path Equity Commitment Letter").

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

ARTICLE I

Definitions

Section 1.01 Definitions.

(a) As used in this Agreement (including the recitals hereto), the following terms shall have the following meanings:

"5% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own Warrants and/or Warrant Shares that represent, in the aggregate (on an as-exercised basis), a number of shares of Common Stock equal to at least 5% of the issued and outstanding Common Stock (on an as-exercised basis).

"Accumulated Liquidation Preference" has the meaning set forth in the Certificate of Designation.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person; provided, however, that (i) the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, and (ii) other than in the case of the definitions of "Hill Path Investor Party", "HPS Investor Party", "Hill Path Investor Related Party", "HPS Investor Related Party" or "Permitted Affiliate Transferee", Section 4.08, Section 5.04, Section 5.09(g), Section 5.09(i), Article VII or Section 8.13, in no event shall any of the Investor Parties or any of their respective Subsidiaries be considered an Affiliate of any portfolio company or investment fund affiliated with or managed by affiliates of Hill Path or HPS, nor shall any other portfolio company or investment fund affiliated with or managed by affiliates of Hill Path or HPS be considered to be an Affiliate of an Investor Party or any of their respective Affiliates. For this purpose, " control" (including, with its correlative meanings, "controlling", " controlled by" and " under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"Anti-Corruption and Anti-Bribery Laws" means any provision of the Foreign Corrupt Practices Act of 1977, as amended, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption Law.

"Anti-Terrorism and Anti-Money Laundering Laws" means all applicable anti-money laundering Laws, including the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and all other applicable anti-money laundering Laws of the various jurisdictions in which the Group Companies conduct their business.

"as-exercised basis" means with respect to the outstanding shares of Common Stock as of any date, all outstanding shares of Common Stock calculated on a basis in which all Warrant Shares issuable upon exercise of the outstanding Warrants are assumed to be outstanding as of such date.

"Board" means the Board of Directors of the Company.

"Business Day" means any day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by applicable Law to be closed.

"Change in Control" has the meaning set forth in the Certificate of Designation.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Committee" means any or all of the Audit Committee, the Compensation Committee, the Nominating and Governance Committee, and any other committee of the Board.

"Common Stock" means the common stock, par value $0.0001 per share, of the Company.

"Company Charter Documents" means the Company's amended and restated certificate of incorporation and amended and restated bylaws, each as in effect as of the date of this Agreement, and shall include the Certificate of Designation upon the filing thereof with the Secretary of State of the State of Delaware.

"Company Equity Awards" means the Company Stock Options, Company RSUs, Company PSUs and any other award granted under the Company Stock Plan.

"Company Material Adverse Effect" means any event, fact, condition, occurrence, effect, development, circumstance, matter or change (each, an "Effect") that, individually or in the aggregate, together with all other Effects, (a) has had, or would reasonably be expected to have, a material adverse effect upon the financial condition, business, results of operations or assets or liabilities of the Group Companies, taken as a whole, or (b) prevents, delays or impedes, or would reasonably be expected to prevent, delay or impede the performance by the Company of its obligations under this Agreement or the consummation of the Transactions; provided, however, that "Company Material Adverse Effect" shall not include in the case of clause (a) any Effect to the extent resulting from any of the following that occurs on or after the date of this Agreement: (i) conditions affecting the United States economy or any foreign economy generally, or any regulatory environment in the United States and elsewhere in the world; (ii) any national, international or supranational political, geopolitical or social conditions, including any civil commotion, civil disorder, or any other type of civil unrest (including riots, public demonstrations, protests, looting, and revolutions), the threat, engagement, cessation or escalation by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States or any other country, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or any other country; (iii) changes to financial, banking, credit, currency, commodity (including food), capital or securities markets (including any disruption thereof and any increase or decrease therein), changes to the price of any market index or changes in interest rates or exchange rates; (iv) changes or prospective changes in GAAP or in accounting standards or the interpretation or enforcement thereof after the date hereof; (v) changes or prospective changes in any applicable Laws after the date hereof; (vi) any change that is generally applicable to the industries or markets in which the Group Companies

operate; (vii) any national or international calamities, crises or natural disasters (including those arising from storms, hurricanes, tornados, flooding, earthquakes, volcanic eruptions, epidemics or pandemics (including COVID-19) or other force majeure events, together with any restrictions, sanctions, other limitations or policies enacted or applied by a Governmental Authority in response to any of the foregoing (including any measures taken in response to COVID-19)); (viii) any changes to the credit rating of any Group Company (although any facts and circumstances that may have given rise or contributed to any such changes that are not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect); (ix) the negotiation, execution, announcement or existence of this Agreement or the transactions contemplated hereby, the identity of an Investor, its Affiliates or public announcement of this Agreement and the Transactions; (x) any action taken by an Investor contemplated, permitted or required by this Agreement or the Transaction Documents (including the obtaining of approval or consent from any Governmental Authority or other third-party in connection with the consummation of the transactions contemplated hereby and thereby) or at an Investor's request or with an Investor's consent; (xi) the failure to take any action by the Group Companies if that action is prohibited by this Agreement or the Transaction Documents and the Investor either did not consent to such action or withheld, delayed or conditioned its consent; (xii) any failure by the Group Companies to meet any internal or published projections, forecasts, estimates or predictions of revenue, earnings, cash flow or cash position and any changes in the results of operations of the Group Companies for any period ending prior to, on or after the date of this Agreement (although any facts and circumstances that may have given rise or contributed to any such failure that are not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect); provided, however, that Effects set forth in the foregoing clauses (i) through (vii) may be taken into account in determining whether there has been or is a Company Material Adverse Effect, to the extent that such Effects have an incremental disproportionate adverse effect on the financial condition, business, results of operations, assets or liabilities of the Group Companies, taken as a whole, compared to other companies of similar size operating in the same industry as the Group Companies.

"Company Preferred Stock" means the preferred stock, par value $0.0001, of the Company.

"Company PSU" means a restricted stock unit of the Company subject to both time-based and performance-based vesting conditions.

"Company Related Party" means the Group Companies and any of their former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect Representatives or any of their respective successors or assigns.

"Company RSU" means a restricted stock unit of the Company subject solely to time-based vesting conditions.

"Company SEC Documents" means all forms, reports, schedules, statements, exhibits, definitive proxy statements, registration statements and other documents required to be filed (or furnished) by the Company with the SEC under the Exchange Act or the Securities Act

and publicly available prior to the date hereof, such documents have since the time of their filing been amended, modified or supplemented prior to the date hereof.

"Company Stock Plan" means The ONE Group Hospitality, Inc. 2019 Equity Incentive Plan, as may be amended from time to time.

"Company Stock Option" means an option to purchase shares of Common Stock; provided that it excludes the Warrants.

"Competition Law" shall mean the Sherman Antitrust Act, the Clayton Antitrust Act, the Federal Trade Commission Act, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments or lessening of competition or strengthening of a dominant position through merger or acquisition.

"Confidentiality Agreement" means that certain agreement between Hill Path and the Company dated as of April 20, 2023, as may be amended from time to time in accordance with its terms.

"Credit Agreement" means the Credit and Guaranty Agreement, dated as of October 4, 2019, by and among the Company, The ONE Group, LLC, certain subsidiary guarantors, Goldman Sachs Specialty Lending Group, L.P., as administrative agent, and Goldman Sachs Bank USSA, as collateral agent, and the lender parties thereto, as amended by the First Amendment to Credit and Guaranty Agreement, dated as of May 8, 2020, the Second Amendment to Credit and Guaranty Agreement, dated as of August 10, 2020, the Third Amendment to Credit and Guaranty Agreement, dated as of August 6, 2021, and the Fourth Amendment to Credit and Guaranty Agreement, dated as of December 13, 2022.

"Debt Commitment Letter" means the Commitment Letter, dated as of the date hereof, among The One Group, LLC, Deutsche Bank Securities Inc., Deutsche Bank AG New York Branch, HPS Investment Partners, LLC and HG Vora Capital Management, LLC.

"DGCL" means the Delaware General Corporation Law, as amended, supplemented or restated from time to time.

"Disqualified Holder" mean each Person identified on Schedule I hereto.

"Enforceability Exception" means (i) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other Laws affecting generally the enforcement of creditors' rights and (ii) equitable remedies, including specific performance, whether considered in a proceeding at law or in equity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is (or was at any relevant time) a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first

entity, trade or business, or that is (or was at any relevant time) a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Existing Company Policies" means the Company's Corporate Code of Conduct and Ethics and Insider Trading Policy, in each case as in effect as of the date of this Agreement.

"Expense Reimbursement Side Letter" means that certain agreement between Hill Path and the Company dated as of January 4, 2024.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board, or an authorized committee thereof.

"Fraud" means a false statement of a material fact with respect to the making of any of the representations and warranties by a party as set forth in this Agreement or in any other Transaction Document (a) where the party making such false statement (i) has actual knowledge (as opposed to constructive knowledge) of the falsity of such statement and that such falsity would constitute a breach of any of the representations and warranties made by the party as set forth in this Agreement or in any other Transaction Document, (ii) makes such false statement with the intent to deceive the party to whom such false statement is made and (iii) makes such false statement with the intent to induce reliance in the party to whom such false statement is made, and (b) where the party to whom such false statement is made justifiably relies on such false statement.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

"Governmental Authority" means any government, court, regulatory or administrative agency, commission, arbitrator (public or private), arbitral body (public or private), tribunal, judicial body, commission, department, or other governmental entity, instrumentality or including any self-regulatory organization, whether federal, state, local, municipal, territorial, provincial, domestic, foreign or multinational.

"Group Companies" means, collectively, the Company and each of its Subsidiaries and each of them, individually, is a "Group Company."

"Hill Path" means Hill Path Capital LP.

"Hill Path Fund" means Hill Path Capital Partners III LP.

"Hill Path Investor" has the meaning set forth in the Preamble. Any reference to any action by the Hill Investor Parties in this Agreement shall require an instrument in writing signed by the Hill Path Investor so long as it is the sole Hill Path Investor Party or each of the Hill Path Investor Parties.

"Hill Path Investor Parties" means the Hill Path Investor and each Affiliate of the Hill Path Investor to whom shares of Preferred Stock, Warrants or Warrant Shares are transferred in accordance with the terms of this Agreement.

"Hill Path Investor Related Party" means the Hill Path Investor and any other financing sources of the Hill Path Investor, the Hill Path Fund and any of the foregoing's respective former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, Representatives, affiliates, stockholders, equityholders, lenders or any of the foregoing's respective successors or assigns.

"HPS" means HPS Investment Partners, LLC, a Delaware limited liability company.

"HPS Investor" has the meaning set forth in the Preamble. Any reference to any action by the HPS Investor Parties in this Agreement shall require an instrument in writing signed by the HPS Investor so long as it is the sole HPS Investor Party or each of the HPS Investor Parties.

"HPS Investor Parties" means the HPS Investor and each Affiliate of the HPS Investor to whom shares of Preferred Stock, Warrants or Warrant Shares are transferred in accordance with the terms of this Agreement.

"HPS Investor Related Party" means the HPS Investor and any other financing sources of the HPS Investor, HPS and any of the foregoing's respective former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, Representatives, affiliates, stockholders, equityholders, lenders or any of the foregoing's respective successors or assigns.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Investor" has the meaning set forth in the Preamble.

"Investor Director" means a member of the Board who was elected to the Board as an Investor Director Designee.

"Investor Material Adverse Effect" means any effect, change, event, development or occurrence that does or would reasonably be expected to, individually or in the aggregate, prevent or materially delay or impair (a) the consummation by an Investor of any of the Transactions on a timely basis or (b) the performance by the Investor of its material obligations under this Agreement.

"Investor Parties" means each of the Hill Path Investor Parties and the HPS Investor Parties.

"Investor Related Party" means each of the Hill Path Investor Related Parties and the HPS Investor Related Parties.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, with respect to the Company, the actual knowledge of Emanuel Hilario, Tyler Loy and Alex Tabolsky (none of whom shall have any personal liability or obligations of inquiry regarding knowledge).

"Law" means applicable laws, common laws, statutes, rules, regulations, codes, ordinances, executive orders, judgments, injunctions, governmental guidelines or interpretations that have the force of law, permits, decrees, orders or other similar requirement enacted, adopted, promulgated or applied by any Governmental Authorities.

"Leased Real Property" means all right, title and interest of the Group Companies to any leasehold interests in any real property, together with all buildings, structures, improvements and fixtures thereon.

"Liens" means liens, encumbrances, mortgages, charges, claims, restrictions, pledges, security interests, title defects, easements, rights-of-way, covenants, encroachments, outstanding options, rights of first refusal or rights of first offer, or other adverse claims of any kind with respect to a property or asset.

"NASDAQ" means the NASDAQ Global Select Market.

"Permitted Affiliate Transferee" means (a) an investment fund or vehicle of which Hill Path, HPS or a Subsidiary thereof serves as the general partner or discretionary manager, advisor or subadvisor with the right to control such investment fund or vehicle and (b) any Subsidiary of the foregoing; provided that no investment fund or vehicle, or Subsidiary thereof, shall be a Permitted Affiliate Transferee if the applicable investment fund or vehicle has a direct or indirect investment in any Disqualified Holder.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, joint stock company, association, estate, trust, firm, unincorporated organization or any other entity, organization or association, including a Governmental Authority.

"Personal Data" means information relating to or reasonably capable of being associated with an identified or identifiable person, device, or household, including, but not limited to, "personal data," "personal information," or other similar information defined under applicable data privacy and cybersecurity Laws.

"Registration Rights Agreement" means that certain Registration Rights Agreement to be entered into by the Company and each Investor, the form of which is set forth as Exhibit E hereto.

"Representatives" means, with respect to any Person, its officers, directors, principals, partners, managers, members, employees, consultants, agents, financial advisors, investment bankers, attorneys, accountants, other advisors and other representatives.

"Sanction" means any sanctions administered or enforced by the U.S. government, including the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State and including the designation as a "specially designated national" or "blocked

person," the European Union, any European Union Member State, His Majesty's Treasury, the United Nations Security Council, or other relevant sanctions authority.

"Sanctioned Country" means any country or territory that is the subject or the target of Sanctions (currently, the Crimea region of Ukraine, the non-government controlled areas of the Kherson and Zaporizhzhia regions of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, Cuba, Iran, North Korea and Syria).

"Sanctioned Persons" means any Person or Persons owned or controlled by, or acting on behalf of, any Person subject or the target of Sanctions or located, organized or resident in a Sanctioned Country.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Senior Credit Agreement" has the meaning provided in the Certificate of Designation.

"Security Incident" means (i) any unauthorized processing of confidential data, information, and data compilation contained in the Systems or on the databases of the Group Companies, including Personal Data used by or necessary to the Group Companies' business; (ii) any unauthorized access to the Group Companies' Systems; or (iii) any incident that may require notification to any Person, Governmental Authority, or any other entity under applicable data privacy and cybersecurity Laws.

"Subsidiary" or "Subsidiaries" of any Person (other than an individual), means any Person, corporation, limited liability company, partnership, association, trust or other entity of which (x) securities or other ownership interests representing more than 50% of the voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (y) sufficient voting rights to elect at least a majority of the board of directors or other governing body are, as of such date, owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Systems" means the computer software, websites and information technology systems owned or used by the Group Companies.

"Tax" means any and all United States federal, state, local or non-United States taxes, fees, levies, duties, tariffs, imposts, and other similar charges (together with any and all interest, penalties and additions to tax) imposed by any Governmental Authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains taxes; license, registration and

documentation fees; and customs duties, tariffs and similar charges, together with any interest or penalty, in addition to tax or additional amount imposed by any Taxing Authority.

"Tax Return" means returns, reports, claims for refund, declarations of estimated Taxes and information statements, including any schedule or attachment thereto or any amendment thereof, with respect to Taxes filed or required to be filed with any Governmental Authority, including consolidated, combined and unitary tax returns.

"Taxing Authority" means any Governmental Authority having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Transaction Documents" means this Agreement, the Certificate of Designation, the Hill Path Equity Commitment Letter, the Warrant Agreements, the Registration Rights Agreement and all other documents, certificates or agreements executed pursuant to an express term of this Agreement, the Certificate of Designation, the Hill Path Equity Commitment Letter, the Warrant Agreements or the Registration Rights Agreement; provided, that, for the avoidance of doubt, "Transaction Document" shall not include the Acquisition Agreement or ancillary documents thereunder or any transaction documents regarding the debt financing in connection with the Acquisition.

"Transactions" means the transactions expressly contemplated by this Agreement and the other Transaction Documents; provided, that, for the avoidance of doubt, "Transactions" shall not include the Acquisition or any debt financing in connection with the Acquisition.

"Transfer" by any Person means, directly or indirectly (including by way of a change in the ownership of any Investor Party or any of its direct or indirect owners), to sell, transfer, assign, pledge, encumber, hypothecate or otherwise dispose of or transfer (by the operation of law or otherwise), or to enter into any Contract, option or other arrangement, agreement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or other disposition or transfer (by the operation of law or otherwise), of any voting, economic or other interest in any equity securities (including the Purchased Securities) beneficially owned by such Person; provided, however, that, notwithstanding anything to the contrary in this Agreement, a Transfer shall not include (i) the exercise of one or more Warrants for Warrant Shares, (ii) the redemption or other acquisition of Warrants, Warrant Shares or Preferred Stock by the Company, (iii) the transfer (other than by an Investor Party) of any limited partnership interests or other equity interests in the Investor Party (or any direct or indirect parent entity of such Investor Party) (provided that if any of the Purchased Securities ceases to be controlled (directly or indirectly) by the Person (directly or indirectly) controlling such Person immediately prior to such transfer, such event shall be deemed to constitute a "Transfer") or (iv) any transfer in connection with a transaction or agreement contemplated by Section 5.13.

"Warrant Shares" means the shares of Common Stock that may be issued upon exercise of the Warrants.

"Willful Breach" means a material breach of any provision in this Agreement which is the consequence of an act or failure to act undertaken by the breaching party with the actual

knowledge that the taking of, or failure to take, such act would, or would reasonably be expected to, result in a material breach of this Agreement.

(b) In addition to the terms defined in Section 1.01(a), the following terms have the meanings assigned thereto in the Sections set forth below:

Term	Section
Acquisition Agreement	Recitals
Acquisition	Recitals
Action	Section 3.07
Agreement	Preamble
Allocation	Section 5.10(c)
Announcement	Section 5.04
Buyer	Recitals
Certificate of Designation	Recitals
Closing	Section 2.01
Closing Date	Section 2.01
Company	Preamble
Company Disclosure Letter	Article III
Company SEC Financial Statements	Section 3.04(b)
Confidential Information	Section 5.05
DOJ	Section 5.02(c)
Equity Loan	Section 5.13
Excluded Stock	Section 5.15(a)
FDA	Section 3.08(b)
Financing	Section 4.04
FTC	Section 5.02(c)
Fundamental Representations	Section 6.03(a)
Hill Path Entity	Section 5.09(g)
Hill Path Equity Commitment Letter	Recitals
Hill Path Indemnitors	Section 5.09(g)
Identified Person	Section 5.09(i)
Identified Persons	Section 5.09(i)
Investor	Preamble
Investor Director Designee	Section 5.09(a)
Market Warrant Agreement	Recitals
Market Warrants	Recitals
Material Contract	Section 3.09
Organizational Documents	Section 5.09(g)
Participation Portion	Section 5.15(b)(ii)
Penny Warrant Agreement	Recitals
Penny Warrants	Recitals
Preferred Stock	Recitals
Proposed Securities	Section 5.15(b)(i)
Purchase Price	Section 2.01
Purchased Securities	Recitals
Related Companies	Section 5.09(i)

Term	Section
Related Company	Section 5.09(i)
Restraints	Section 6.01(a)
Seller	Recitals
Target	Recitals

ARTICLE II

Purchase and Sale

Section 2.01 Purchase and Sale. On the terms and conditions set forth in this Agreement and subject to the satisfaction (or, to the extent permitted by applicable Law, waiver by the party entitled to the benefit thereof) of the conditions set forth in Article VI, at the Closing, (a) the Hill Path Investor shall purchase and acquire from the Company the Purchased Securities set forth opposite its name on Schedule II hereto for an aggregate purchase price of $150,000,000 (such aggregate purchase price, the " Hill Path Purchase Price"); provided that the Hill Path Purchase Price shall be increased pro rata based on any Additional Purchased Securities that are purchased pursuant to Section 5.19 hereof (if any) and (b) the HPS Investor shall purchase and acquire from the Company the Purchased Securities set forth opposite its name on Schedule II hereto for an aggregate purchase price of $10,000,000 (such aggregate purchase price, the "HPS Purchase Price" and summed with the Hill Path Purchase Price, the "Purchase Price").

Section 2.02 Closing.

(a) On the terms of this Agreement, and subject to the conditions set forth herein, the closing of the sale and purchase of the Purchased Securities (the " Closing") shall occur at 10:00 a.m. (New York City time) on the third (3rd) Business Day after all of the conditions to the Closing set forth in Article VI of this Agreement have been satisfied or, to the extent permitted by applicable Law, waived by the party entitled to the benefit thereof (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time) at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, or at such other place, time and date as shall be agreed between the Company and the Investor (the date on which the Closing occurs, the " Closing Date"); provided, however, unless agreed otherwise by the Hill Path Investor, the Closing will not occur unless and until the Company has provided prior notice of the anticipated Closing Date in a written notice delivered by the Company to the Investors, to the extent practicable, at least three Business Days prior to the Closing Date.

(b) At the Closing:

(i) the Company shall (1) deliver to the Hill Path Investor evidence reasonably satisfactory to the Hill Path Investor of the issuance of the Purchased Securities in its name and in such amounts as set forth on Schedule II opposite its name, through the facilities of The Depository Trust Company or, at the Hill Path Investor's election, in book entry form, which Purchased Securities will be free and clear of all Liens, except restrictions imposed by applicable securities Laws, the Company Charter Documents and the Transaction Documents, and (B) the Registration Rights Agreement, duly executed by the Company;

(ii) the Company shall (1) deliver to the HPS Investor evidence reasonably satisfactory to the HPS Investor of the issuance of the Purchased Securities in its name and in such amounts as set forth on Schedule II opposite its name, through the facilities of The Depository Trust Company or, at the HPS Investor's election, in book entry form, which Purchased Securities will be free and clear of all Liens, except restrictions imposed by applicable securities Laws, the Company Charter Documents and the Transaction Documents, and (B) the Registration Rights Agreement, duly executed by the Company; and

(iii) each Investor shall (A) pay its applicable portion of the Purchase Price as set forth on Schedule II opposite its name to the Company, by wire transfer in immediately available U.S. federal funds, to the account designated by the Company in writing at least three (3) Business Days prior to the Closing Date, and (B) deliver to the Company the Registration Rights Agreement, duly executed by each Investor.

(iv) If an Investor is a "United States person" as defined in Section 7701(a)(30) of the Code, such Investor shall have delivered to the Company (or its paying agent or any other applicable withholding agent) a duly executed, valid and properly completed IRS Form W-9 (or successor form). If an Investor is not a "United States person" as defined in Section 7701(a)(30) of the Code, such Investor shall have delivered to the Company (or its paying agent or any other applicable withholding agent) a duly executed, valid and properly completed IRS Form W-8EXP (or successor form) certifying such Investor's complete exemption from U.S. dividend withholding tax or IRS Form W-8IMY (or successor form) certifying such Investor's status as a "withholding foreign partnership" within the meaning of Treasury Regulations Section 1.1441-5(c)(2) that has assumed primary responsibility for withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under Section 3406 of the Code, and withholding under any other provision of the Code.

ARTICLE III

Representations and Warranties of the Company

Except as set forth in (i) the Company SEC Documents filed or furnished by the Company with the SEC after January 1, 2023 and publicly available prior to the date hereof and that is reasonably apparent on the face of the applicable disclosure to be applicable to the representation and warranty set forth herein but excluding any disclosure contained under the heading "Risk Factors" in any "forward-looking statements" legend or in any other disclosures contained or referenced therein of information, factors, or risks that are predictive, cautionary, or forward-looking in nature or (ii) the confidential disclosure schedules of the Company delivered to the Investors prior to the execution of this Agreement (the "Company Disclosure Letter") (it being understood that any information, item or matter set forth in one section or subsection of the Company Disclosure Letter shall only be deemed to apply to and qualify the section or subsection to which it corresponds in number and each other section or subsection to the extent that is reasonably apparent on the face of such disclosure that such information, item or matter is relevant to such other section or subsection), the Company hereby represents and warrants to each Investor as of the date hereof and as of the Closing (which is prior to the consummation of the Acquisition and such representations and warranties do not give effect to the consummation of the Acquisition) as follows:

Section 3.01 Organization; Qualification.

(a) The Company is a corporation, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Each Subsidiary of the Company is duly organized, validly existing and in good standing (or the equivalent thereof) (if applicable) under the Laws of its respective jurisdiction of formation, except for such failures that would not, individually or in the aggregate, be material to the Group Companies, taken as a whole. Each Group Company has the requisite corporate (or the equivalent thereof) power and authority to own, lease and operate its material assets and properties and to carry on the business as now conducted and as proposed to be conducted, except for such failures that would not, and would not be reasonably expected to, individually or in the aggregate, be material to the Group Companies, taken as a whole. True, complete, and correct copies of the Company Charter Documents, as in effect as of the date hereof, are included in the Company SEC Documents.

(b) Each Group Company is duly qualified or licensed to carry on its business and operations and is in good standing (or the equivalent thereof) (if applicable) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of the business as presently conducted by it, makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.02 Capitalization.

(a) As of the date immediately preceding the date hereof, the authorized capital stock of the Company consisted of 75,000,000 shares of Common Stock and 10,000,000 shares of Company Preferred Stock. As of the close of business on March 15, 2024 (the "Measurement Date"), (i) 33,584,949 shares of Common Stock were issued and 31,308,496 shares of Common Stock were outstanding, (ii) 2,276,453 shares of Common Stock were held in treasury, (iii) 2,084,498 shares of Common Stock were reserved for issuance pursuant to outstanding Company Equity Awards, (iv) 10,000,000 shares of Company Preferred Stock were reserved for issuance, and (v) no shares of Company Preferred Stock were issued or outstanding or held in treasury. All of the issued and outstanding shares of Common Stock are duly authorized, validly issued, fully paid, nonassessable and have not been issued (A) in violation of any agreement, arrangement, or commitment to which the Company is a party or is subject, (B) in violation of applicable Law or (C) in violation of preemptive rights, rights of first refusal or similar rights. When issued, all shares of Common Stock subject to issuance pursuant to the Company Stock Plan will be duly authorized, validly issued, fully paid and nonassessable and will not be issued (x) subject to any purchase option, call option, preemptive rights, resale rights, subscription rights, rights of first refusal, or similar rights pursuant to any agreement, arrangement, or commitment to which the Company is a party or is subject, (y) in violation of any agreement, arrangement, or commitment to which the Company is a party or is subject or (z) in violation of applicable Law. When issued, all shares of Preferred Stock which will be issued in connection with or as contemplated by this Agreement, and all shares of Common Stock issuable upon conversion of the Warrants, will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all Liens (other than Liens (i) arising under applicable state and federal securities Laws, (ii) arising under this Agreement or any other Transaction Document or (iii) arising from contracts, pledges or other actions of the Investors or their Affiliates) and will not be issued (1) subject to any

purchase option, call option, preemptive rights, resale rights, subscription rights, rights of first refusal, or similar rights pursuant to any agreement, arrangement, or commitment to which the Company is a party or is subject, (2) in violation of any agreement, arrangement, or commitment to which the Company is a party or is subject or (3) in violation of applicable Law (assuming the accuracy of the Investors' representations and warranties in Article IV).

(b) All of the issued and outstanding shares of capital stock or limited liability interests of the Company's Subsidiaries are held directly or indirectly by the Company and are owned directly or indirectly by the Company (except as stated in Section 3.02(b) of the Company Disclosure Letter), free and clear of all Liens (other than Liens arising under (i) applicable state and federal securities Laws, (ii) the Credit Agreement or documents related thereto, and (iii) any transfer restrictions as may be set forth in the organizational documents of the applicable Subsidiary of the Company), and are not subject to any preemptive right or right of first refusal created by statute, the articles of incorporation or bylaws or other equivalent organizational documents, as applicable, of the Subsidiaries of the Company or any contract to which any of the Subsidiaries of the Company is a party or by which it is bound.

(c) Except (i) as described in Section 3.02(a) or (ii) any Company Equity Awards issued after the Measurement Date under the Company Stock Plan (as in effect on the date hereof), there are no other equity or voting securities or interests of the Company of any character authorized, issued, reserved for issuance or outstanding and no other outstanding or authorized options, warrants, restricted stock units, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts or other similar rights (including any preemptive rights) issued or granted by the Company. Other than (i) with respect to the Company Equity Awards or (ii) as may be set forth in the organizational documents of the applicable Subsidiary of the Company, there are no other outstanding contracts or commitments that would require any of the Group Companies to issue, sell or otherwise cause to become outstanding any of its capital stock or any other analogous rights, interests or any other arrangements, commitments or agreements of any character relating to dividend rights or to the sale, issuance, transfer, delivery or sale or the acquisition, repurchase or redemption of shares of capital stock or voting of, or the granting of rights to acquire, any equity securities of, or voting interest in, any of the Group Companies, or any securities or other instruments convertible into, exchangeable for or evidencing the right to purchase any equity securities of any of the Group Companies. There are no outstanding agreements of any kind which obligate the Company to grant, extend or enter into any such agreements relating to any Company capital stock, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights with respect to any capital stock of the Company.

(d) There are no equity appreciation, phantom equity, profit participation or other similar rights in respect of capital stock, or other equity interests in, of the Group Companies.

(e) None of the Group Companies has any authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or convertible into, exchangeable for or evidencing the right to subscribe for or acquire securities having the right to vote) with the stockholders of the Group Companies on any matter. Except as disclosed in Section 3.02(e) of the Company Disclosure Letter, there are no stockholders'

agreement, voting trust, registration rights agreement or other similar agreement relating to the disposition, voting or dividends with respect to any capital stock of the Group Companies to which any of the Group Companies is a party or by which it is bound to vote or dispose of any shares of capital stock of, or other equity or voting interest in, any of the Group Companies.

(f) No Group Company owns, directly or indirectly, any equity, voting or similar interest in, or any interest convertible into or exchangeable or exercisable for, at any time, any equity, voting or similar interest in, any Person (other than another Group Company).

Section 3.03 Authority; Board Approval.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and each Transaction Document to which the Company is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery of this Agreement and each of the Transaction Documents to which the Company is or will be a party and the performance by the Company of its obligations hereunder and thereunder have been (and the Transaction Documents to which the Company is or will be a party will be at or prior to the Closing) has been duly authorized by all necessary corporate action on the part of the Company and no other proceeding (including by its equityholders) on the part of the Company is necessary to authorize the execution, delivery or performance of this Agreement and each of the Transaction Documents to which the Company is or will be a party or to consummate the Transactions. No vote of the Company's equityholders is required to approve this Agreement (or any of the Transaction Documents to which the Company is or will be a party) or for the Company to consummate the Transactions. This Agreement has been (and the Transaction Documents to which the Company is or will be a party will be at or prior to the Closing) duly and validly executed and delivered by the Company and constitutes (and will constitute when executed) a valid, legal and binding agreement of the Company (assuming that this Agreement has been, and the Transaction Documents to which the Company is or will be a party will be, duly authorized, executed and delivered by the other Persons party thereto at or prior to the Closing), enforceable against the Company in accordance with their respective terms, subject to any applicable Enforceability Exception.

(b) The Board at a duly held meeting (or by written consent in lieu thereof) has unanimously (i) determined that this Agreement, the other Transaction Documents, and the Transactions, upon the terms and subject to the conditions set forth herein, are fair to, and in the best interests of, the Company and its stockholders and (ii) duly and validly authorized and approved the execution, delivery and performance of this Agreement and the Transaction Documents and the consummation by the Company of the Transactions, upon the terms and subject to the conditions set forth herein.

Section 3.04 SEC Reports; Financial Statements; Undisclosed Liabilities.

(a) The Company has timely filed or furnished each Company SEC Document required to be filed or furnished by the Company pursuant to the Securities Act or the Exchange Act with the SEC since January 1, 2021. As of their respective dates, after giving effect to any amendments, modifications, or supplements thereto made prior to the date hereof, the Company SEC Documents (i) complied in all material respects with the requirements of the

Securities Act and the Exchange Act, and the Sarbanes-Oxley Act, as applicable, and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to any of the Company SEC Documents.

(b) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes and schedules, if any, thereto) included or incorporated in the Company SEC Documents (the "Company SEC Financial Statements") (i) have been timely filed and, when filed, complied in all material respects with the published rules and regulations of the SEC with respect thereto in effect at the time of filing the applicable Company SEC Document, (ii) have been prepared from the books and records of the Group Companies and in accordance with GAAP, applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto and subject, in the case of interim financial statements, to the absence of notes required by GAAP and normal and recurring year-end adjustments (none of which, individually or in the aggregate, are material) or as may be permitted by the SEC for quarterly reports on Form 10-Q or other rules and regulations of the SEC, and (iii) fairly present, in all material respects, the consolidated financial condition and results of operations of the Group Companies as of the dates thereof and for the periods therein referred to (subject, in the case of interim financial statements, to the absence of notes required by GAAP and normal and recurring year-end adjustments and except as may be permitted by the SEC).

(c) The Company has established and maintains, and has since January 1, 2021 maintained, a system of internal control over financial reporting as defined in and in compliance with Rules 13a-15(f) and 15d-15(f) of the Exchange Act, which are designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company has established and maintains, and has since January 1, 2021 maintained, disclosure controls and procedures as defined in and in compliance with Rules 13a–15(e) and 15d–15(e) of the Exchange Act, which are designed to provide reasonable assurance that material information required to be disclosed by the Company, including its consolidated Subsidiaries, in the reports that it furnishes or files under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. Except as disclosed in Section 3.04(c) of the Company Disclosure Letter, since January 1, 2021, no Group Company has received any material complaint, allegation, assertion or claim regarding significant deficiencies or material weaknesses in the design or operation accounting or auditing practices, procedures, methodologies or methods of any Group Company or their respective internal accounting controls, including any complaint, allegation, assertion or claim that any Group Company has engaged in unlawful accounting or auditing practices, nor have there been any allegations of Fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting. As of the date hereof, to the Knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certification and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act, without qualification, when next due.

(d) Except as and to the extent reflected on the Company's consolidated balance sheet (or the notes thereto) as of December 31, 2023 included in the Company SEC Financial Statements filed prior to the date hereof, no Group Company has any accrued, absolute, contingent or other liabilities that are of a nature required to be set forth on a consolidated balance sheet of the Group Companies in accordance with GAAP, other than liabilities (i) that have arisen after December 31, 2023 in the ordinary course of business of the Group Companies; (ii) that are reflected on, reserved against, or disclosed in the notes to, the Company's consolidated balance sheet included in the Company's quarterly report on Form 10-Q for the fiscal quarter ended December 31, 2023; (iii) that are expressly contemplated by this Agreement or otherwise incurred in connection with the Transactions; or (iv) that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.05 Consents and Approvals; No Violations.

(a) No notices to, filings with or authorizations, consents or approvals of any Governmental Authority are necessary for the execution, delivery or performance by the Company of this Agreement or the Transaction Documents to which the Company is or will be a party or the consummation by the Company of the Transactions, except for (i) notices, filings, authorizations, consents or approvals as may be required under the HSR Act or any similar Competition Laws; (ii) the filing by the Company of the Certificate of Designation with the Delaware Secretary of State; (iii) those required to comply with applicable federal and state securities Laws, (iv) those required under the applicable rules of NASDAQ, and (v) those the failure of which to obtain or make would not reasonably be expected to have a Company Material Adverse Effect.

(b) Neither the execution, delivery and performance by the Company of this Agreement nor the execution, delivery and performance by the Company of the Transaction Documents to which the Company is or will be a party nor the consummation by the Company of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the Company Charter Documents or the organizational documents of any Group Company; (ii) result in a violation or breach of, conflict with or constitute (with or without due notice or lapse of time or both) a default under or give rise to any right of termination, cancellation, amendment or acceleration or result in the loss of a material benefit or right under, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which any Group Company is a party or by which any Group Company or any of its properties or assets are bound; (iii) violate any order, writ, injunction, decree, Law, statute, rule or regulation of any Governmental Authority having jurisdiction over any Group Company; (iv) except as contemplated by this Agreement or with respect to Liens arising under applicable federal and state securities Laws, result in the creation of any Lien upon any of the properties or assets of the Group Companies or in the suspension, revocation or forfeiture of any franchise, permit or license granted by a Governmental Authority to the Group Companies; or (v) require the consent, notice or other action by any Person under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation to which any Group Company is a party or by which any Group Company or any of its properties or assets are bound, except in the case of clauses (ii) through (v), as would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.06 Absence of Changes. Since December 31, 2023, the Group Companies have operated their respective businesses in the ordinary course of business of the Group Companies (except for the preparation, negotiation and performance of this Agreement, the Transaction Documents, the Transactions, the Acquisition Agreement, the Acquisition and the debt financing related thereto). Without limiting the generality of the foregoing, since that date (a) there has not been any Effect that has had, or would reasonably be expected to have, a Company Material Adverse Effect, and (b) no Group Company has taken any action or engaged in any of the activities that would be prohibited from being freely taken by Section 5.01 if such action had been taken after the date hereof.

Section 3.07 Litigation. As of the date of this Agreement, there is no legal, regulatory, or administrative proceeding, suit, disputes, investigations, arbitrations or actions ("Actions") before any Governmental Authority pending or, to the Company's Knowledge, threatened against Group Companies or any of their respective properties or assets that (i) has had or if determined adversely to any Group Company would reasonably be expected to be material to any Group Company, or (ii) has resulted or would reasonably be expected to result in any material injunctive or other equitable relief being granted against any Group Company. As of the date of this Agreement, there is no Action pending or, to the Company's Knowledge, threatened seeking to prevent, hinder, modify, delay or challenge the Transactions. As of the date of this Agreement, the Group Companies are not subject to, and none of its assets is bound by, any order, writ, injunction or decree before any Governmental Authority directed specifically at the Group Companies or their assets or properties pursuant to which the Group Companies have outstanding obligations in any material respect.

Section 3.08 Compliance with Applicable Law.

(a) The Group Companies are, and have been since January 1, 2021, in compliance in all material respects with all applicable Laws in respect of the conduct of its business and the ownership of its property, including applicable environmental Laws. The Group Companies possess all permits and licenses of Governmental Authorities that are required to conduct their business, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Group Companies comply in all material respects with all applicable data privacy and cybersecurity Laws related to the Group Companies' processing of Personal Data, and to the Knowledge of the Group Companies, since January 1, 2021: (i) have not suffered and are not suffering a Security Incident, and (ii) have not been required to notify any Person or Governmental Authority of any Security Incident. The Group Companies' Systems have not materially malfunctioned or failed since January 1, 2021. The Group Companies have not received a written notice (including any enforcement notice), letter or complaint from a Governmental Authority or any Person alleging noncompliance or, to the Knowledge of the Company, any potential noncompliance, with any applicable data privacy or cybersecurity Laws and have not been subject to any proceeding alleging noncompliance with any applicable data privacy or cybersecurity Laws related to Group Companies' processing of Personal Data.

(b) Except as would not be materially adverse to the business conducted by the Group Companies, since January 1, 2021, the Group Companies (i) have complied with any applicable Laws related to the preparation, holding, offering for sale and sale of food and

beverages, including any applicable Law governing food and beverage safety and handling, nutrition labeling on menus or branding, including, without limitation, the Food Safety Modernization Act and Section 4205 of the Patient Protection and Affordable Care Act, and any U.S. Food and Drug Administration ("FDA") implementing regulations or (ii) have not been subject to investigation or review by any Governmental Authority regarding the foregoing. There have been no material recalls or food registry notifications of any packaged food or beverage or other products manufactured, processed, produced, labeled, held, packed, transported, distributed or advertised by any of the Group Companies, whether ordered by a Governmental Authority or undertaken voluntarily by any Group Company, and to the Company's Knowledge, all products are being manufactured, produced, packaged, held or distributed by the Company that are subject to the jurisdiction of the FDA or the U.S. Department of Agriculture have been manufactured, processed, produced, labeled, held, packed, transported, or advertised in compliance with all applicable requirements under the Federal Food, Drug and Cosmetic Act, Federal Meat Inspection Act, Poultry Products Inspection Act, and Egg Products Inspection Act, to the extent applicable, and each of their applicable implementing requirements, and none of the food or beverage or other products of the Group Companies has been adulterated, mispackaged, or mislabeled in material violation of applicable Law or otherwise pose any threat to the health or safety of a consumer when consumed or used in the intended manner.

(c) None of the Group Companies, any Affiliate of the Group Companies, or their respective directors, officers, or, to the Knowledge of the Company, employees, agents, or advisors of any such Person is a Sanctioned Person, is located in a Sanctioned Country, or is otherwise subject to Sanctions. Each of the Group Companies, their Affiliates, and their respective directors, officers and, to the Knowledge of the Company, employees, agents and advisors is in compliance with and has not violated (i) Sanctions, (ii) Anti-Corruption and Anti-Bribery Laws, and (iii) Anti-Terrorism and Anti-Money Laundering Laws or any other provincial, territorial, local, state, federal, or foreign Laws relating to "know your customer" and anti-money laundering rules and regulations or terrorist financing. No part of the proceeds from the Transactions has been or will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Sanctioned Person or in any Sanctioned Country, (B) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any Person in violation of any Anti-Corruption and Anti-Bribery Laws, or (C) otherwise in any manner that would result in a violation of Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, or Anti-Corruption and Anti-Bribery Laws by any Person.

(d) The Group Companies maintain policies, procedures and controls that are designed (and otherwise comply with applicable Laws) to ensure that the Group Companies and each of their respective directors, officers, employees and agents is in compliance with all applicable Anti-Corruption and Anti-Bribery Laws.

Section 3.09 Contracts. Each contract that is material to the business of the Group Companies (each, a "Material Contract") is valid, binding and enforceable on the Group Companies to the extent such Person is a party thereto and, to the Knowledge of the Company, each other party thereto, and is in full force and effect, except where the failure to be valid, binding or in full force and effect, individually or in the aggregate, has not been and would not reasonably be expected to be material to the business of the Group Companies. Each Group Company, to the

extent party to a Material Contract, is in compliance in all material respects with all Material Contracts and has performed all obligations required to be performed by it, except where such noncompliance, individually or in the aggregate, has not been and would not reasonably be expected to be material to the business of the Group Companies.

Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect: (a) the Group Companies have prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and accurate; (b) all Taxes owed by the Group Companies that are due (whether or not shown on any Tax Return) have been timely paid except for Taxes which are being contested in good faith by appropriate proceedings which have been adequately reserved against in accordance with GAAP; (c) no examination or audit of any Tax Return relating to any Taxes of the Company or any of its Subsidiaries or with respect to any Taxes due from or with respect to the Company or any of its Subsidiaries by any Taxing Authority is currently in progress or threatened in writing or, to the Knowledge of the Company, otherwise; (d) none of the Group Companies has engaged in, or has any liability or obligation with respect to, any "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4; and (e) none of the Group Companies has distributed stock of another Person or has had its stock distributed by another Person in a transaction that was or was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

Section 3.11 No Rights Agreement; Anti-Takeover Provision. The Company is not party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan. The Board has taken all necessary actions to ensure that no restrictions included in any "control share acquisition," "fair price," "moratorium," "business combination" or other state anti-takeover Law (including Section 203 of the DGCL) or any comparable anti-takeover provisions of the Company Charter Documents is, or as of the Closing will be, applicable to the Transactions, including the Company's issuance of Warrant Shares and any issuance pursuant to Section 5.15.

Section 3.12 Brokers and Other Advisors. Except for Deutsche Bank Securities Inc., no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's, or other similar fee or commission, or the reimbursement of expense in connection therewith, in connection with the Transactions, based upon arrangements made by or on behalf of the Group Companies.

Section 3.13 Employee Matters.

(a) To the Knowledge of the Company, since January 1, 2021, none of the Group Companies has engaged in any unfair labor practice or similar unlawful employment-related practice that could reasonably be expected to result in liability to the Group Companies or their Affiliates in excess of $250,000 individually or $500,000 in the aggregate. There is (i) no unfair labor practice complaint pending against any of the Group Companies or, to the Knowledge of the Group Companies, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any of the Group Companies or, to the Knowledge of the Group Companies, threatened against any of them; (ii) no strike or work stoppage in existence or threatened involving the Group Companies; and (iii) to the Knowledge of the Company, no union representation question existing with respect to the employees of the Group Companies and, to the

Knowledge of the Company, no union organization activity that is taking place, except (with respect to any matter specified in clause (i) and (ii) above, either individually or in the aggregate) such as is not reasonably likely to have a Company Material Adverse Effect or result in liabilities in excess of $250,000 individually or $500,000 in the aggregate for all such liabilities. No Group Company has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or any similar federal or state Law that remains unpaid or unsatisfied and could reasonably be expected to result in a Company Material Adverse Effect or is in excess of $250,000 individually or $500,000 in the aggregate for all such liabilities.

(b) The Group Companies and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Code and the regulations and published interpretations thereunder with respect to the Company Stock Plan and have performed all their obligations under the Company Stock Plan. The Company Stock Plan, to the extent intended to qualify under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service indicating that the Company Stock Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter that would cause the Company Stock Plan to lose its qualified status. No liability to the Pension Benefit Guaranty Corporation (other than required premium payments), the Internal Revenue Service, the Company Stock Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by the Group Companies or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Code or similar state laws, the Company Stock Plan does not provide health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employees of the Group Companies or their respective ERISA Affiliates.

(c) No Company Stock Plan is, and none of the Group Companies or any of their ERISA Affiliates sponsors, maintains, contributes to (is required to contribute to), or has ever had any current or contingent direct or indirect liability or obligation (including on account of being considered a single employer under Section 414 of the Code with any other Person) with respect to or under: (i) a U.S. "defined benefit plan" as defined in Section 3(35) of ERISA or a plan in the United States that is or was subject to Title IV of ERISA or Section 412 of the Code; or (ii) a "multiemployer plan" as defined in Section 3(37) of ERISA. No event has occurred and, to the Knowledge of the Company, no condition exists that would, either directly or indirectly, or by reason of any Group Companies' affiliation with any ERISA Affiliate, subject the Group Companies to any material Tax, fine, lien, penalty, or other liability imposed by ERISA, the Code, or other applicable Law.

Section 3.14 Sale of Securities. Based in part on the representations and warranties set forth in Section 4.06, the offer, sale and issuance of the Purchased Securities pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the Knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in any general or public solicitation or general advertising or publicly disseminated advertisement, article, notice, or other communication regarding the Purchased Securities and Warrant Shares published in any newspaper, magazine or similar media or broadcast over television, radio, or the internet or presented at any seminar or any other general solicitation or general advertisement, including any of the methods described in Section 502(c) under the Securities Act. Neither the

Company nor, to the Knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Purchased Securities under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Purchased Securities under this Agreement to be integrated with other offerings by the Company.

Section 3.15 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ, and the Company has taken no action designed to, or which is reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the NASDAQ, nor has the Company received as of the date of this Agreement any written notification from the SEC or the NASDAQ regarding the termination of such registration or listing. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the NASDAQ applicable to it for the continued trading of its Common Stock on the NASDAQ.

Section 3.16 Leased Real Property. None of the Group Companies owns, or has owned, any real estate. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, (a) the applicable Group Company has a good and valid leasehold interest in each material Company Lease, free and clear of all Liens (other than under the Credit Agreement or documents related thereto), (b) to the Knowledge of the Company, none of the Group Companies has received written notice of any material default under any agreement evidencing any lien or other agreement affecting the any material Company Lease, which default continues on the date hereof, (c) there is no pending or, to the Knowledge of the Company, threatened condemnation, eminent domain or similar proceedings affecting the Leased Real Property and (d) there have been no releases of hazardous substances at, on, or under any Leased Real Property that would reasonably be expected to give rise to liability under applicable Laws regarding pollution or protection of the environment.

Section 3.17 Affiliate Transactions. None of the officers or directors of the Company is presently a party to any transaction with the Group Companies (other than as holders of options, and/or other grants or awards under the Company Stock Plans, and for services as employees, officers and directors) that is material to the Group Companies, taken as a whole. Since January 1, 2021, none of the Group Companies has entered into any transaction between the Company or any of its Subsidiaries, on the one hand, and any Affiliate of the Company, on the other hand, except in compliance with the Company's related party transaction policy.

Section 3.18 No Other Representations or Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III, ANY TRANSACTION DOCUMENTS OR IN ANY CERTIFICATE OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS (AS QUALIFIED BY THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULES), NONE OF THE COMPANY OR ANY OTHER PERSON HAS MADE OR MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER WRITTEN

OR ORAL, ON BEHALF OF THE COMPANY OR ANY OF ITS AFFILIATES, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING THE COMPANY FURNISHED OR MADE AVAILABLE TO EACH INVESTOR AND ITS REPRESENTATIVES OR AS TO THE FUTURE REVENUE, PROFITABILITY OR SUCCESS OF THE COMPANY OR ANY REPRESENTATION OR WARRANTY ARISING FROM STATUTE OR OTHERWISE IN LAW.

ARTICLE IV

Representations and Warranties of the Investors

Each Investor, severally and not jointly, represents and warrants to the Company solely with respect to itself, as of the date hereof and as of the Closing Date:

Section 4.01 Organization; Standing. Such Investor is a limited partnership or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite limited partnership or limited liability company power and authority (as applicable) to carry on its business as presently conducted. Such Investor is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.02 Authority; Non-contravention.

(a) Such Investor has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by such Investor of this Agreement and the other Transaction Documents and the consummation by such Investor of the Transactions have been duly authorized and approved by all necessary action on the part of such Investor, and no further action, approval or authorization by any of its stockholders, partners, members or other equity owners, as the case may be, is necessary to authorize the execution, delivery and performance by such Investor of this Agreement and the other Transaction Documents and the consummation by such Investor of the Transactions. This Agreement has been, and at the Closing the other Transaction Documents to which such Investor is contemplated to be a party will be, duly executed and delivered by such Investor and, assuming due authorization, execution and delivery hereof or thereof, as applicable, by the Company, constitutes (or in the case of the other Transaction Documents, at the Closing will constitute) a legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with its terms, except that such enforceability may be limited by the Enforceability Exception.

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by such Investor, nor the consummation of the Transactions by such

Investor, nor performance or compliance by such Investor with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the certificate of incorporation, bylaws or other comparable organizational documents of such Investor, or (ii) assuming that the authorizations, consents and approvals referred to in Section 4.03 are obtained prior to the Closing Date and the filings referred to in Section 4.03 are made and any waiting periods with respect to such filings have terminated or expired prior to the Closing Date, (x) violate any Law or Judgment applicable to such Investor or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) under, result in the termination of or a right of termination or cancellation under, result in the loss of any benefit or require a payment or incur a penalty under, any of the terms, conditions or provisions of any Contract to which such Investor or its Affiliates is a party or accelerate such Investor's or its Affiliate's obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.03 Governmental Approvals. Except for (a) the filing by the Company of the Certificate of Designation with the Delaware Secretary of State and (b) any filings required under, and compliance with other applicable requirements of, the HSR Act and any other applicable Competition Laws prior to the issuance of the Warrant Shares upon the exercise of the Warrants in accordance with their terms, no consent or approval of, or filing, license, permit or authorization, declaration or registration with, any Governmental Authority is necessary for the execution and delivery of this Agreement and the other Transaction Documents by such Investor, the performance by such Investor of its obligations hereunder and thereunder and the consummation by such Investor of the Transactions in accordance with applicable Laws, other than such other consents, approvals, filings, licenses, permits, authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.04 Financing.

(a) Attached as Exhibit D hereto is a true, complete and correct copy of the Hill Path Equity Commitment Letter from the Hill Path Fund pursuant to which the Hill Path Fund has agreed, subject to the terms and conditions thereof, to invest in the Hill Path Investor the amounts set forth therein (the " Hill Path Financing"). At the Closing and assuming the performance by the Company of its obligations under this Agreement, the net proceeds of the Hill Path Financing, when funded in accordance with the terms and conditions of the Hill Path Equity Commitment Letter, shall provide the Hill Path Investor with cash proceeds on the Closing sufficient to pay, (i) the Hill Path Purchase Price and (ii) any and all fees and expenses required to be paid by the Hill Path Investor at the Closing in connection with the consummation of the Transactions. Except as expressly set forth in this Agreement or the Hill Path Equity Commitment Letter, there are no conditions precedent to the obligations of the Hill Path Fund to provide the Hill Path Financing. As of the date hereof, the Hill Path Equity Commitment Letter is valid and in full force and effect and constitutes the valid and binding obligation of the Hill Path Fund, enforceable in accordance with its terms. As of the date hereof, the Hill Path Equity Commitment Letter has not been modified, amended, withdrawn or altered and no such modification, amendment, withdrawal or alternation is contemplated and the commitments under the Hill Path Equity Commitment Letter have not been withdrawn or rescinded in any respect. There are no other agreements, side letters or arrangements relating to the Hill Path Equity Commitment Letter

or the Hill Path Financing to which the Hill Path Investor or any of its Affiliates is party that could affect the availability of the Hill Path Financing other than the Hill Path Equity Commitment Letter. No event has occurred which, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach on the part of the Investor or the Hill Path Fund under the Hill Path Equity Commitment Letter.

(b) HPS Investor has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the HPS Purchase Price and consummate the transactions contemplated by this Agreement applicable to HPS Investor.

Section 4.05 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of such Investor, except for Persons, if any, whose fees and expenses will be paid by such Investor.

Section 4.06 Purchase for Investment. Such Investor acknowledges that the Purchased Securities, and the Warrant Shares, have not been registered under the Securities Act or under any state or other applicable securities laws. Such Investor (a) acknowledges that it is acquiring the Purchased Securities and the Warrant Shares pursuant to an exemption from registration under the Securities Act and other applicable securities Laws solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, transfer, or otherwise dispose of any of the Purchased Securities and the Warrant Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Purchased Securities and the Warrant Shares and of making an informed investment decision and has done so, (d) is an "accredited investor" (as that term is defined by Rule 501 of the Securities Act) and (e) (1) has reviewed the information that it considers necessary or appropriate to make an informed investment decision with respect to the Purchased Securities and the Warrant Shares, (2) has had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify the information furnished to it or to which it had access and (3) can bear the economic risk of (i) an investment in the Purchased Securities and the Warrant Shares indefinitely and (ii) a total loss in respect of such investment.

Section 4.07 Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by such Investor and its respective Representatives, such Investor and its respective Representatives have received and may continue to receive from the Company and its Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, in each case containing forward-looking information, regarding the Company and its Subsidiaries and their respective businesses and operations. Such Investor hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans to the extent each of them contain forward-looking information with which such Investor is familiar, that such Investor is making its own evaluation of the adequacy and

accuracy of such forward-looking information so furnished to such Investor (including the reasonableness of the assumptions underlying such forward-looking information), and that except for the representations and warranties made by the Company in Article III or the Transaction Documents and other than for Fraud, such Investor will have no claim against the Company with respect thereto.

Section 4.08 No Other Representations or Warranties. Except for the representations and warranties made by such Investor in this Article IV or the Transaction Documents, neither such Investor nor any other Person acting on its behalf makes any other express or implied representation or warranty with respect to such Investor or any of its Affiliates or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Company or its Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Company acknowledges the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by such Investor in this Article IV or the Transaction Documents, neither such Investor nor any other Person makes or has made any express or implied representation or warranty to the Company or its Representatives with respect to any oral or written information presented to the Company or its Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transactions or any other transactions or potential transactions involving the Company and such Investor.

ARTICLE V

Additional Agreements

Section 5.01 Negative Covenants. Except as required by applicable Law or Judgment, or as expressly contemplated by this Agreement, the Acquisition Agreement, the Debt Commitment Letter or other Transaction Document or as described in Section 5.01 of the Company Disclosure Letter, during the period from the date of this Agreement until the Closing Date (or such earlier date on which this Agreement may be terminated pursuant to Section 7.01) (the "Interim Period"), unless the Hill Path Investor otherwise consents in writing (which consent shall not be unreasonably withheld, delayed or conditioned), (x) the Company shall, and shall cause its Subsidiaries to, use their reasonable best efforts to operate their businesses in all material respects in the ordinary course consistent with past practice, and to maintain and preserve in all material respects its existing relationships with its customers, employees, independent contractors and other business relationships having material business dealings with the Company or any of its Subsidiaries and (y) the Company shall not, and shall cause each of its Subsidiaries not to, take any action which would require the affirmative vote or consent of the Investors under Section 9 of the Certificate of Designation as if it were in effect and the Purchased Securities were outstanding throughout the Interim Period.

Section 5.02 Reasonable Best Efforts; Filings.

(a) Subject to the terms and conditions of this Agreement, each of the Company and the Investors shall cooperate with each other and use (and shall cause its Subsidiaries to use) its reasonable best efforts (unless, with respect to any action, another standard of

performance is expressly provided for herein) to promptly (i) take, or cause to be taken, all actions, and do, or cause to be done, and assist and cooperate with each other in doing, all things necessary, proper or advisable to cause the conditions to Closing to be satisfied as promptly as reasonably practicable and to consummate and make effective, in the most expeditious manner reasonably practicable, the Transactions, including preparing and filing promptly and fully all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents, (ii) obtain all approvals, consents, registrations, waivers, permits, authorizations, orders and other confirmations from any Governmental Authority or third party necessary, proper or advisable to consummate the Transactions, (iii) execute and deliver any additional instruments necessary to consummate the Transactions and (iv) defend or contest in good faith any Action brought by a third party that could otherwise prevent or impede, interfere with, hinder or delay in any material respect the consummation of the Transactions. Each of the parties shall continue to cooperate with each other throughout the term of this Agreement to evaluate and identify any filings, consents, clearances or approvals required under or in connection with any Competition Law, and shall, subject to the terms of this Section 5.02, make any appropriate filings with the applicable Governmental Authorities required to be made under applicable Competition Laws.

(b) Without limiting the generality of Section 5.02(a), the Company and the Investors acknowledge that one or more filings, notifications, expirations of waiting periods, waivers and/or approvals under applicable Competition Laws may be necessary in connection with, and prior to, the issuance of Warrant Shares in accordance with the Warrant Agreements. From and after the Closing, each Investor will promptly notify the Company in writing if any such filing, notification, expiration of a waiting period, waiver and/or approval (in each case under any Competition Law) is required by applicable Competition Laws in connection with any such exercise of the Warrants by such Investor in accordance with the Warrant Agreements. Notwithstanding anything to the contrary in this Agreement or the Warrant Agreements, any exercise of the Warrants shall be subject to such required applicable filing, notification, expiration of a waiting period, waiver and/or approval. To the extent requested by either the Company or an Investor from time to time following the Closing, each of the Company and the Investors will use reasonable best efforts to cooperate in promptly making or causing to be made all necessary applications, submissions and filings under any applicable Competition Laws in connection with the issuance of Warrant Shares whether in advance of such exercise or contemporaneous with such exercise. For the avoidance of doubt, each Investor and its transferees may require the reasonable cooperation of the Company under this Section 5.02 at any time, and from time to time and on multiple occasions, prior to the exercise in full of the Warrants held by an Investor or such transferee. Each Investor shall be responsible for the payment of 100% of any filing fees associated with any such applications, submissions or filings by such Investor or its Affiliates or the Company.

(c) Each of the Company and each of the Investors shall use its reasonable best efforts to (i) cooperate in all respects with the other party in connection with any filing or submission with a Governmental Authority in connection with the Transactions and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the Transactions, including any proceeding initiated by a private person, (ii) keep the other party informed in all material respects and on a reasonably timely basis of any material communication received by the Company or any of the Investors, as the case may be, from or given by the

Company or any of the Investors, as the case may be, to the Federal Trade Commission (" FTC"), the Department of Justice (" DOJ") or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private Person, in each case regarding the Transactions, (iii) subject to applicable Laws relating to the exchange of information, and to the extent reasonably practicable, consult with the other party with respect to information relating to such party and its respective Subsidiaries, as the case may be, that appears in any filing made with, or written materials submitted to, any third Person or any Governmental Authority in connection with the Transactions, and (iv) to the extent permitted by the FTC, the DOJ or such other applicable Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and conferences. Any documents or other materials provided pursuant to this Section 5.02 may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material, and the parties may, as each deems advisable, reasonably designate any material provided under this Section 5.02 as "outside counsel only material."

(d) Notwithstanding anything to the contrary in this Agreement, nothing in this Section 5.02 or elsewhere in this Agreement shall require an Investor or the Company to take any action with respect to any of its controlled Affiliates or its direct or indirect portfolio companies, including selling, divesting, conveying, holding separate, or otherwise limiting its freedom of action with respect to any assets, rights, products, licenses, businesses, operations, or interest therein, of any such Affiliates or any direct or indirect portfolio companies of investment funds advised or managed by one or more Affiliates of an Investor. The parties agree that all obligations of other parties related to regulatory approvals shall be governed exclusively by this Section 5.02.

Section 5.03 Corporate Actions.

(a) At any time that any Warrants are outstanding, the Company shall (i) from time to time take all lawful action within its control to cause the authorized capital stock of the Company to include a sufficient number of authorized but unissued shares of Common Stock to satisfy the exercise requirements of the Warrants then outstanding, and (ii) not effect any voluntary deregistration under the Exchange Act or any voluntary delisting with the NASDAQ (or any other national securities exchange upon which the Common Stock may subsequently be listed) in respect of the Common Stock (other than in connection with a Change in Control pursuant to which the Company satisfies in full its obligations under the Warrant Agreements).

(b) Prior to the Closing, the Company shall file with the Secretary of State of the State of Delaware the Certificate of Designation.

(c) If any occurrence during the Interim Period would have resulted in an adjustment to the Warrant Shares pursuant to the Warrants if the Warrants had been issued and outstanding since the date of this Agreement, the Company shall adjust the Warrant Shares, effective as of the Closing, in the same manner as would have been required by the Warrants if the Warrants had been issued and outstanding since the date of this Agreement.

Section 5.04 Public Disclosure. Each Investor and the Company shall consult with each other before issuing, and give each other party the opportunity to review and comment upon, any press release or other public statements with respect to the Transaction Documents or the Transactions, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Judgment, court process or the rules and regulations of any national securities exchange or national securities quotation system. The Investors and the Company agree that the initial press release to be issued with respect to the Transactions following execution of this Agreement shall be in a form agreed to by the parties hereto (the " Announcement"). Notwithstanding the forgoing, this Section 5.04 shall not apply to any press release or other public statement made by the Company or an Investor which is consistent with the Announcement and does not contain any further material information relating to the Transactions. Notwithstanding the foregoing, this Section 5.04 shall not prohibit any disclosure of information concerning this Agreement in connection with any dispute between the parties hereto regarding this Agreement. Notwithstanding anything to the contrary in this Agreement or the Confidentiality Agreement, in no event shall either this Section 5.04 or any provision of the Confidentiality Agreement limit disclosure by any Investor Party and their respective Affiliates of ordinary course communications regarding this Agreement and the Transactions to its existing or prospective general and limited partners, equityholders, members, managers and investors of any Affiliates of such Person, including disclosing information about the Transactions on their websites in the ordinary course of business consistent with past practice, provided that (i) such disclosure does not include any material non-public information regarding the Company and (ii) provided that the recipients agree to maintain the confidentiality of such communications and such Investor will remain liable for any damages arising out of a failure by such recipients to keep such communications confidential in accordance with the provisions hereof unless such recipient has entered into a confidentiality agreement enforceable by the Company. The Company will reasonably cooperate with each Investor to provide information to such Investor's general and limited partners that does not include material non-public information regarding the Company.

Section 5.05 Confidentiality. Each Investor will, will cause its Affiliates who actually receive Confidential Information (as defined below) to, and will use commercially efforts to cause its and their respective Representatives who actually receive Confidential Information to, keep confidential any information (including oral, written and electronic information) concerning the Company, its Subsidiaries or its Affiliates that may be furnished to such Investor, its Affiliates or their respective Representatives by or on behalf of the Company or any of its Representatives (collectively referred to as the " Confidential Information") and to use the Confidential Information solely for the purposes of either (x) furthering the Company's business and affairs or (y) monitoring, administering or managing such Investor's investment in the Company made pursuant to this Agreement, provided, that the Confidential Information shall not include information that (a) was or becomes available to the public (other than as a result of a disclosure by an Investor, any of its Affiliates or any of their respective Representatives in violation of this Section 5.05 or other obligation of confidentiality to the Company including under fiduciary duties), (b) was or becomes available to an Investor, any of its Affiliates or any of their respective Representatives from a source other than the Company or its Representatives, provided, that such source is not known to an Investor to be disclosing such information in violation of an obligation of confidentiality (whether by agreement or otherwise) to the Company, (c) at the time of disclosure is already in the possession of an Investor, any of its Affiliates or any of their respective

Representatives on a non-confidential basis, or (d) was independently developed by the Investor, any of its Affiliates or any of their respective Representatives without reference to, incorporation of, or other use of any Confidential Information; provided, that Confidential Information may be disclosed (i) to an Investor's Affiliates and its and their respective Representatives, in each case, in the ordinary course of business (including in connection with monitoring, administrating or managing an Investor's investment in the Company) (provided that such Investor's Affiliates and the respective Representatives agree to maintain the confidentiality of such Confidential Information and such Investor will remain liable for any damages arising out of a failure by such Investor's Affiliates and the respective Representatives to keep such Confidential Information confidential in accordance with the provisions hereof unless such Affiliate or Representative has entered into a confidentiality agreement enforceable by the Company), (ii) to existing or prospective limited partners or other equityholders in investment funds affiliated with or managed by Affiliates of Hill Path, HPS and their respective Representatives in the ordinary course of business (provided that such recipients agree to maintain the confidentiality of such Confidential Information and the Hill Path Investor (in the case of disclosure to existing or prospective Hill Path-Affiliated investment fund investors) and the HPS Investor (in the case of disclosure to existing or prospective HPS-Affiliated investment fund investors) will remain liable for any damages arising out of a failure by such recipients to keep such Confidential Information confidential in accordance with the provisions hereof unless such recipient has entered into a confidentiality agreement enforceable by the Company, and provided further that no information disclosed pursuant to this clause (ii) shall include any material non-public information of the Company), (iii) to any prospective financing sources in connection with a hedge or other derivative transaction, or the syndication and marketing of any Equity Loan, in each case, as long as such prospective purchaser or lender, as applicable, is subject to customary confidentiality restriction, (iv) as may be reasonably determined by an Investor to be necessary in connection with such Investor's enforcement of its rights in connection with this Agreement or its investment in the Company and its Subsidiaries, (v) to another Investor, such other Investor's Affiliates and its and their respective Representatives, in each case, in connection with monitoring, administrating or managing the Investors' investment in the Company (provided that the recipient Investor will be solely liable, and will solely remain liable for any damages arising out of a failure by such recipient Investor, its Affiliates and their respective Representatives to keep such Confidential Information confidential in accordance with the provisions hereof unless, in the case of Affiliates or Representatives, such Affiliates or Representative has entered into a confidentiality agreement enforceable by the Company) or (vi) as may otherwise be required by applicable Law, regulation, Judgment, stock exchange rule or other applicable judicial or governmental process (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), provided, that in the case of disclosure pursuant to this clause (vi), the applicable Investor, its Affiliates and its and their respective Representatives, as the case may be, shall, to the extent legally permitted and reasonably practicable, provide notice to the Company sufficiently in advance of any such disclosure so that the Company will have a reasonable opportunity to timely seek (at its sole cost and expense) to limit, condition or quash such disclosure. The Confidentiality Agreement shall terminate simultaneously with the Closing.

Section 5.06 NASDAQ Listing of Shares. To the extent the Company has not done so prior to the date of this Agreement, the Company shall promptly notify the NASDAQ regarding the issuance of the Warrant Shares, subject to official notice of issuance. From time to time following the Closing Date, the Company shall ensure that the NASDAQ is notified regarding

the issuance of the number of Warrant Shares then issuable upon exercise of the then-outstanding Warrants, subject to official notice of issuance, or comply with the relevant procedures required by such other primary exchange as to which the Common Stock is then admitted for trading.

Section 5.07 Transfers.

(a) Until the first anniversary of the Closing Date, no Investor shall Transfer any Preferred Stock without the prior written consent of the Company, which the Company may withhold in its sole discretion; provided, that at any time after the Closing Date, each of the Investor Parties shall be permitted, without the consent of the Company, to Transfer any or all of their respective Preferred Stock to a Permitted Affiliate Transferee. After the first anniversary of the Closing Date, each Investor shall be permitted to Transfer any or all of its Preferred Stock to any Person, other than any Person that is a Disqualified Holder.

(b) No Investor shall Transfer any Warrants, Warrant Shares or Preferred Stock unless (i) the Transfer is consummated in compliance with the Existing Company Policies, the Company's other policies as in effect from time to time (to the extent such other policies (A) are duly adopted by the Board to comply with applicable Law, (B) are not inconsistent with this Agreement and the other Transaction Documents, (C) are generally applicable policies and (D) are not designed to target or have a disproportionate impact on any of the Investor Parties), the Company's Organizational Documents, this Agreement and the other Transaction Documents (including the legal opinion requirement set forth in Section 5.08(b)) and in compliance with all applicable securities Laws (including pursuant to an effective registration statement or applicable exemption from the registration requirements of the Securities Act of 1933, as amended) and (ii) the transferor reimburses the Company for all reasonable costs and expenses (including reasonable and documented attorneys' fees) it incurs in connection with such Transfer (other than with respect to expenses which are expressly the Company's obligation under the Registration Rights Agreement); provided that in the case of clause (i), no Investor shall be required to comply with the Existing Company Policies with respect to the Transfer of Preferred Stock except for the Company's generally applicable insider trading policy in effect on the date hereof; provided, further, that with respect to the Transfer of Preferred Stock, no preapproval shall be required for a Transfer, nor shall any Transfer be prohibited by the reason of such insider trading policy, to a Person who either (x) agrees to a customary "big boy" acknowledgement or (y) is party to a confidentiality agreement with the Company and is provided with any then-current material non-public information. Notwithstanding anything else herein, no Transfer is permitted to any Disqualified Holder in any circumstance; provided, that the restrictions set forth in this sentence shall not apply to Transfers made pursuant to a *bona fide* public offering, or in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any change of control transaction involving the Company or any Subsidiary thereof.

(c) The Company shall provide reasonable cooperation to the Investor Parties in connection with any Transfer of the Preferred Stock, Warrants or Warrant Shares, which may be subject to the execution by a proposed transferee of a confidentiality agreement with the Company and which will not unreasonably disrupt the operation of the Company's business.

Section 5.08 Legend.

(a) All certificates or other instruments representing the Purchased Securities and any Warrant Shares will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS, OR EXCEPT, WITH RESPECT TO ANY COMMON STOCK, WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS.

(a) Upon request of the applicable Investor Party, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act and applicable state securities laws, the Company shall promptly cause the legend to be removed from any certificate for any Purchased Security or Warrant Share to be Transferred in accordance with the terms of this Agreement.

Section 5.09 Board Matters; Election of Directors. Subject to applicable Laws:

(a) Effective as of the Closing, the Company and the Board will increase the size of the Board to nine members (unless there is a vacancy in the Board at such time) and, subject to Section 5.09(d), the Board shall appoint two designated representatives of the Hill Path Investor Parties who are reasonably acceptable to the Board, including after receipt of accurately completed director questionnaires and the satisfactory completion of other processes of the Board and its Nominating and Corporate Governance Committee (each such individual, an "Investor Director Designee") to the Board, with one Investor Director Designee to serve as a Class I Director and one Investor Director Designee to serve as a Class III Director (in each case in accordance with the Company Charter Documents); provided, however, that James Chambers and Scott Ross, the initial Investor Director Designees, are deemed reasonably acceptable to the Board for purposes of this sentence. Following the Closing, the Hill Path Investor shall not be required to comply with the advance notice provisions generally applicable to the nomination of directors by the Company so long as the Hill Path Investor provides reasonable advance written notice to the Company of the Investor Director Designees prior to the mailing of the proxy statement by the Company (provided, that the Company shall provide reasonable advance written notice to the Hill Path Investor of the expected mailing date). For the avoidance of doubt, failure of the stockholders of the Company to elect any Investor Director Designee to the Board shall not affect the right of the Hill Path Investor to nominate a director for election pursuant to this Section 5.09 in any future election of directors. For so long as the Hill Path Investor Parties have the right to designate an Investor Director Designee and subject to Section 5.09(b), (x) one Investor Director shall be entitled, but not obligated, to serve as a member of the Nominating and Governance Committee, one Investor Director shall be entitled, but not obligated, to serve as a member of the Compensation Committee, and one Investor Director shall be entitled, but not obligated, to serve as a member of the Audit Committee and (y) the Board shall consider in good faith the inclusion of an Investor Director on each other committee, if any, of the Board, subject in each case to meeting the applicable requirements for service on such committee as set forth in the listing rules of NASDAQ, the Company's corporate governance guidelines applicable to all of the members of such Committee and such Committee's charter. For so long as the Hill Path Investor is entitled to

nominate an Investor Director Designee pursuant to this Section 5.09, the Company shall not decrease the size of the Board if such decrease would require the resignation of either or both Investor Director Designees, in each case without the consent of the Hill Path Investor.

(b) No delay by the Hill Path Investor in proposing any Investor Director Designee shall impair its right to subsequently propose any Investor Director Designee. In the event that the Hill Path Investor has nominated less than the total number of nominees that the Hill Path Investor is entitled to propose pursuant to this Section 5.09, the Hill Path Investor shall have the right, at any time, to propose such additional Investor Director Designee nominees to which it is entitled, in which case, the Board shall, at such time, expand the size of the Board (if necessary) and appoint such additional Investor Director Designee nominees.

(c) Following the Closing Date, if at any time the Accumulated Liquidation Preference is greater than zero and less than $75,000,000, then at the written direction of the Board (with each Investor Director recused from the deliberations and vote on whether to make such a written direction), one Investor Director (selected by the Investor) shall thereby and thereupon resign from the Board effective immediately. Following the Closing Date, if at any time the Accumulated Liquidation Preference is zero or the Preferred Stock is redeemed in full, (i) any and all remaining Investor Director or Investor Directors shall thereby and thereupon resign from the Board effective immediately following the first regularly scheduled Board meeting following such event and (ii) the right of the Hill Path Investor Parties to designate Investor Director Designees shall terminate. As a condition to being appointed to the Board, each Investor Director shall deliver to the Company an undated resignation letter, which shall be held in escrow by the Company until it becomes effective (without the necessity of any further action by any Person, including the Investor Director or the Hill Path Investor) in accordance with the two preceding sentences.

(d) Each Investor Director Designee shall, at the time of his or her nomination or appointment as an Investor Director and at all times thereafter until such individual ceases to serve as an Investor Director:

(i) meet and comply with any and all policies, procedures, processes, codes, rules, standards and guidelines of the Company applicable to all non-employee Board members, including the Company's code of business conduct and ethics, securities trading policies and corporate governance guidelines;

(ii) to the extent applicable, meet and comply with any requirements under applicable Law or stock exchange listing rules for membership on the applicable Committee;

(iii) not be subject to any order, decree or judgment of any Governmental Authority prohibiting service as a director of any public company; and

(iv) not be an employee, officer or consultant to, or be receiving any compensation or benefits from, any Disqualified Holders (unless otherwise agreed to by the Governance Committee of the Board).

(e) If the Hill Path Investor exercises its designation rights in accordance with the provisions of this Section 5.09, the Company and the Board shall (i) include the Investor Director Designee designated by the Hill Path Investor in accordance with this Section 5.09 in the Company's slate of nominees (whether in the Company's proxy statement or otherwise) for the applicable meeting of the Company's stockholders or action by written consent at which directors are to be elected, (ii) recommend that the Company's stockholders vote in favor of such Investor Director Designee, (iii) support such nominee in a manner that is no less favorable as compared to the support provided to other director nominees of the Company with respect to the applicable meeting of stockholders or action by written consent and (iv) cause the Board to have sufficient vacancies to permit such Investor Director Designee to be elected as a member of the Board.

(f) In the event that a vacancy is created at any time by the death, resignation, removal, disqualification or other cause of any Investor Director, including the failure of any Investor Director Designee to be elected at a meeting of stockholders of the Company, the Hill Path Investor shall have the right to designate a replacement to fill such vacancy (but only if the Hill Path Investor would be then entitled to nominate such designee pursuant to the provisions of this Section 5.09). The Board and the Company shall, to the fullest extent permitted by applicable Law, take all actions necessary at any time and from time to time to cause the vacancy created thereby to be filled by the individual so designated and to cause the Board to elect such designee to the Board as soon as possible (subject to the conditions in Section 5.09(a)). For the avoidance of doubt, given that it is understood that the consummation of the Acquisition may occur prior to the Company's 2024 annual meeting of stockholders: (i) the Company may include the Investor Director Designees as nominees for the Board in its proxy statement for such meeting with the election to be conditional upon the consummation of the Closing; or (ii) if the Company's proxy statement in respect of such meeting did not or was unable to include the Investor Designees as nominees for the Board, then, immediately after such annual meeting, the Company and the Board shall reappoint the Investor Director Designees who were serving immediately prior to such annual meeting to the Board and each committee on which they previously served.

(g) The Company shall at all times provide each Investor Director (in his or her capacity as a member of the Board) with the same rights to indemnification and exculpation that it provides to other members of the Board, pursuant to the Company Charter Documents, the DGCL or otherwise, and shall provide and maintain directors' and officers' liability insurance for the benefit of the Investor Directors to the same extent as it provides such insurance to other members of the Board. The Company acknowledges and agrees that any Investor Director who are partners, members, employees, or consultants of Hill Path and/or any of its Affiliates (each, an " Hill Path Entity") may have certain rights to indemnification, advancement of expenses and/or insurance provided by the applicable Hill Path Entity (collectively, the " Hill Path Indemnitors"). The Company acknowledges and agrees that the Company shall be the indemnitor of first resort with respect to any indemnification, advancement of expenses and/or insurance provided in the certificate of incorporation, bylaws or any other organizational documents (collectively, the " Organizational Documents") of the Company and/or any of its Subsidiaries and/or any indemnification agreements to any Investor Director in his or her capacity as a director of the Company or any of its Subsidiaries (such that the Company's obligations to such indemnitees in their capacities as directors are primary and any obligation of the Hill Path Indemnitors to advance expenses or to provide indemnification or insurance for the same expenses

or liabilities incurred by such indemnitees are secondary). Such indemnitees shall, in their capacities as directors, be entitled to all the rights to indemnification, advancement of expenses and entitled to insurance to the extent provided under (i) Organizational Documents of the Company and/or any of its Subsidiaries in effect from time to time and/or (ii) such other agreement, if any, between the Company and/or any of its Subsidiaries, on the one hand, and such indemnitees, on the other hand, without regards to any rights such indemnitees may have against the Hill Path Indemnitors. No advancement or payment by the Hill Path Indemnitors on behalf of such indemnitees with respect to any claim for which such indemnitees have sought indemnification, advancement of expenses or insurance from the Company in their capacities as directors shall affect the foregoing and the Hill Path Indemnitors 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 indemnitees against the Company and/or its applicable Subsidiaries.

(h) In addition, in his or her capacity as a member of the Board or any applicable Committee on which he or she formally serves as a member, such Investor Director shall be entitled to receive, unless waived by such Investor Director, (i) any and all applicable director and Committee fees and compensation that are payable to the Company's non-management directors as part of the Company's director compensation plan (in the same proportions of cash and/or securities as are provided to the Company's non-management directors), and (ii) reimbursement of all reasonable, documented out-of-pocket expenses that he or she incurs in connection with performing Board and any applicable Committee duties consistent with the Company's expense reimbursement policy applicable to non-management directors.

(i) In recognition and anticipation that (i) certain directors, principals, officers, employees, members, partners and/or other representatives of the Hill Path Investor, any Hill Path Investor Party or Hill Path Entity, or of investment funds or vehicles affiliated with an Hill Path Entity or any of its respective Affiliates may be an Investor Director Designee and, accordingly, serve as Directors, and (ii) each of Hill Path or investment funds or vehicles affiliated with Hill Path may now engage, may continue to engage, and/or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage and/or other business activities that overlap with, are complementary to or compete with those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage, the provisions of this Section 5.09(i) are set forth to regulate and define the conduct of certain affairs of the Company and its Subsidiaries with respect to certain classes or categories of business opportunities as they may involve any Hill Path Investor Party or its Affiliates and the powers, rights, duties and liabilities of the Company, its Subsidiaries, and their respective directors, officers and stockholders in connection therewith. To the fullest extent permitted by applicable Law and subject to the last sentence in this Section 5.09(i), the Company, on behalf of itself and each of its Subsidiaries, hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate (or analogous) or business opportunity for any Hill Path Investor Party, any of its Affiliates, or any Investor Director Designees or Investor Director (collectively, " Identified Persons" and, individually, an " Identified Person") and the Company or any of its Affiliates except as set forth herein. To the fullest extent permitted by applicable Law and subject to the last sentence in this Section 5.09(i), in the event that any Identified Person acquires knowledge of a potential transaction or other corporate (or analogous) or business opportunity which may be a corporate (or analogous) or business opportunity for itself,

herself or himself and the Company or any of its Affiliates, such Identified Person shall have no duty to communicate, offer or otherwise make available such transaction or other corporate (or analogous) or business opportunity to the Company or any of its Affiliates and shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any purported fiduciary duty solely by reason of the fact that such Identified Person pursues or acquires such corporate (or analogous) or business opportunity for itself, herself or himself, or offers or directs such corporate (or analogous) or business opportunity to another Person (including any Affiliate of such Identified Person). The Company, on behalf of itself and each of its Subsidiaries, (x) acknowledges that the Identified Persons may now own, may continue to own, and from time to time may acquire and own, investments in one or more other entities (each such entity, a "Related Company" and all such entities, collectively, "Related Companies") that are direct competitors of, or that otherwise may have interests that do or could conflict with those of, the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, and (y) agree that (A) the enjoyment, exercise and enforcement of the rights, interests, privileges, powers and benefits granted or available to the Identified Persons under this Agreement shall not be in any manner reduced, diminished, affected or impaired, and the obligations of the Identified Persons under this Agreement (if any) shall not be in any manner augmented or increased, by reason of any act, circumstance, occurrence or event arising from or in any respect relating to (1) the ownership by an Identified Person of any interest in any Related Company, (2) the affiliation of any Related Company with an Identified Person or (3) any action taken or omitted by any Related Company or an Identified Person in respect of any Related Company, (B) no Identified Person who is not an Investor Director shall, by reason of such ownership, affiliation or action, become subject to any fiduciary duty to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, (C) none of the duties imposed on an Identified Person who is not an Investor Director, whether by contract or law, do or shall limit or impair the right of any Identified Person lawfully to compete with the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates as if the Identified Persons were not a party to this Agreement, and (D) subject to the last sentence in this Section 5.09(i) and to the fullest extent permitted by applicable Law, the Identified Persons are not and shall not be obligated to disclose to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates any information related to their respective businesses or opportunities, including acquisition opportunities, or to refrain from or in any respect to be restricted in competing against the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates in any such business or as to any such opportunities. Notwithstanding anything to the contrary herein and for avoidance of doubt: (i) no Investor Director may pursue any business opportunities he or she first becomes aware of in a Board meeting or in materials distributed to the Board by the Company unless the Company has first elected not to pursue such opportunity, (ii) upon the request of the Company, each Hill Path Investor Party shall cause any Investor Director to describe to the Company the time and manner in which a business opportunity was first learned of by such Investor Director, subject to any applicable confidentiality restrictions binding upon an Identified Person, (iii) any Confidential Information learned by an Investor Director in a Board meeting or in materials distributed to the Board by the Company shall be utilized by an Identified Person solely for the purposes of either (x) furthering the Company's business and affairs or (y) monitoring, administering or managing the Hill Path Investor's investment in the Company made pursuant to this Agreement, and (iv) an Investor Director shall be recused from all Board and Committee meetings, deliberations,

communications, information sharing, votes and consents related to any matter that presents an actual or potential conflict of interest to the extent required by applicable Law.

(j) If any Investor Director becomes a member of the board of directors of a Disqualified Holder, the Hill Path Investor Parties shall cause prompt notice of such fact to be provided to the Company. The Hill Path Investor also agrees that if an Investor Director is a member of the board of directors of a Disqualified Holder and the continued membership of such Investor Director on both the Board and such other board of a Disqualified Holder would constitute a violation of applicable Law, then the Investor Parties shall cause such Investor Director to promptly resign from either (x) such Disqualified Holder's board of directors or (y) the Board and all Committees (provided that, for the avoidance of doubt, the Hill Path Investor shall retain the right to designate a replacement pursuant to Section 5.09(f)).

Section 5.10 Tax Matters.

(a) The Company and its paying agent shall be entitled to withhold Taxes on all payments on the Preferred Stock or the Warrants or any Warrant Shares to the extent required by applicable Law. The Company shall promptly notify the Investors if it determines that it has such requirement to withhold and give each Investor a reasonable opportunity to provide any form or certificate to reduce or eliminate such withholding. Within a reasonable amount of time after making such withholding payment, the Company shall furnish each Investor with copies of any tax certificate, receipt or other documentation reasonably acceptable to such Investor evidencing such payment. The Company shall pay any and all documentary, stamp and similar issue or transfer Tax due on the issuance of the Preferred Stock or the Warrants or any Warrant Shares.

(b) For so long as any shares of the Preferred Stock, the Warrants, or any Warrant Shares is outstanding, the Company is and will remain classified as a corporation for U.S. federal income tax purposes and the Company shall not engage in any transaction that would result in a holder of Preferred Stock, Warrants, or Warrant Shares owning equity in an entity having a classification for U.S. federal income tax purposes different than that of the Company.

(c) The Preferred Stock and the Warrants shall be treated as part of an investment unit under the principles of Section 1273(c)(2) of the Code. Promptly following the Closing Date, the Investors and the Company shall discuss in good faith and agree upon the allocation of the Purchase Price between the Preferred Stock and the Warrants. In the event that the Investors and the Company are unable to agree upon such allocation following good faith negotiations, each Investor shall be entitled to determine the allocation and shall promptly notify the Company of such determination. The allocation as determined pursuant to this Section 5.10(c) (the "Allocation") shall be binding for all Tax purposes and any holder of Preferred Stock and the Company shall report consistently therewith.

(d) Prior to a "determination" (as defined in Section 1313(a) of the Code), change in applicable Law, amendment to the terms of the governing documents of the Company that is made with the necessary consent of the holders of the Preferred Stock, issuance of a Treasury Regulation, precedential Revenue Ruling or similar guidance or a bona fide settlement of an audit, examination or other administrative or judicial proceeding, in each case, to

contrary effect, the parties agree and intend (i) that the Preferred Stock and the Penny Warrants are treated as equity (and not debt or options) for U.S. federal income tax purposes, (ii) the Market Warrants are treated as an option to acquire Common Stock for U.S. federal income tax purposes, (iii) to report no dividend for U.S. federal income tax purposes as includable in income by a holder of Preferred Stock under Section 305 of the Code solely as a result of undeclared and unpaid dividends accruing and accumulating on the Preferred Stock, (iv) that, except to the extent otherwise required by applicable Law (including, for the avoidance of doubt, any exceptions under Treasury Regulations Section 1.305-5(b)(1)), the difference between the issue price of the Preferred Stock, which for tax purposes shall be based on the Allocation, and the initial liquidation preference of the Preferred Stock (each, as determined or adjusted for U.S. federal income tax purposes) shall be treated as a redemption premium for purposes of Treasury Regulations Section 1.305-5(b), which shall accrue as constructive distributions over the period from issuance to the date on which the Preferred Stock is mandatorily redeemable by the Company, and (v) that in the event of a redemption or repurchase of Preferred Stock, to treat such redemption or repurchase as not essentially equivalent to a dividend for purposes of Section 302 of the Code.

(e) Each Investor (and any other holder of Preferred Stock) shall be either a "United States person" as defined in Section 7701(a)(30) of the Code that shall have delivered to the Company (or its paying agent or any other applicable withholding agent) a duly executed, valid and properly completed IRS Form W-9 (or successor form) or a "United States person" as defined in Section 7701(a)(30) of the Code that shall have delivered to the Company (or its paying agent or any other applicable withholding agent) a duly executed, valid and properly completed IRS Form W-8EXP (or successor form) or other form certifying such Investor's complete exemption from U.S. dividend withholding tax or IRS Form W-8IMY (or successor form) certifying such Investor's status as a "withholding foreign partnership" within the meaning of Treasury Regulations Section 1.1441-5(c)(2) that has assumed primary responsibility for withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under Section 3406 of the Code, and withholding under any other provision of the Code.

Section 5.11 Use of Proceeds. The Company shall use the proceeds from the issuance and sale of the Purchased Securities (a) to pay for any costs, fees and expenses incurred in connection with the Transactions or (b) the purchase price in connection with the Acquisition and related transaction expenses for the Acquisition.

Section 5.12 Acquisition Matters. The Company shall (a) use its reasonable best efforts to consummate the Acquisition in accordance with the terms of the Acquisition Agreement and not take any action that would constitute a Willful Breach of the Acquisition Agreement (such definition applied *mutatis mutandis* to the Acquisition Agreement), (b) keep each Investor apprised on a reasonably current basis of (i) any material events regarding any antitrust, regulatory or other notification or filing required in connection with the transactions contemplated by the Acquisition Agreement and (ii) any material disputes that arise under or relate to the Acquisition Agreement prior to the Closing. Notwithstanding anything to the contrary herein, neither the Company nor its Affiliates shall (A) make any amendment or waiver to the Acquisition Agreement that is adverse in any material respect to any Investor (which, for the avoidance of doubt, includes (x) taking any action in connection with such amendment or waiver that would require the Investors' consent if the Closing had occurred and the Certificate of Designations had been in full force and effect

immediately prior to such action, or (y) any modification, amendment, consent or waiver to the definition of "Company Material Adverse Effect" in the Acquisition Agreement), (B) waive the conditions set forth in Sections 7.1 or 7.2 of the Acquisition Agreement or (C) extend the Outside Date (as defined in the Acquisition Agreement), in each case without the prior written consent of the Hill Path Investor (which shall not be unreasonably withheld, conditioned or delayed).

Section 5.13 Financing Cooperation. If requested by an Investor Party in writing, the Company will from time to time (including, for the avoidance of doubt, following the Closing) provide reasonable cooperation (with, in each case, all reasonable, documented out-of-pocket expenses, including legal expenses, incurred by the Company in connection with the foregoing, being borne by such Investor Party) in connection with such Investor Party obtaining any total return swap or a loan or other financing arrangement relating to the Preferred Stock, including pledging, hypothecating or otherwise granting a security interest in such securities to one or more lending institutions as collateral or security for any loan, advance or extension of credit and any Transfer upon foreclosure (or in lieu of foreclosure) upon such securities (an "Equity Loan"), including with respect to the following: (i) entering into a customary issuer agreement (an " Issuer Agreement") with each lender in connection with such transactions (which agreement may include agreements and obligations of the Company relating to procedures and specified time periods for effecting transfers and/or conversions upon a foreclosure, agreements to not hinder or delay exercises of remedies on foreclosure, acknowledgments regarding Organizational Documents and corporate policy, if applicable, and certain acknowledgments regarding the pledged securities and securities law status of the pledge arrangements), (ii) using commercially reasonable efforts to (A) remove any restrictive legends on certificates representing pledged securities and depositing any pledged securities in book entry form on the books of The Depository Trust Company, in each case when eligible to do so or otherwise as agreed with the transfer agent (and providing any necessary indemnities to the transfer agent in connection therewith) or (B) without limiting the generality of clause (A), if such securities are eligible for resale under Rule 144A, depositing such pledged securities in book entry form on the books of The Depository Trust Company or other depository with customary representations and warranties from the applicable Investor Party or its applicable Affiliates regarding compliance with securities Laws, (iii) if so requested by such lender or counterparty, as applicable, re-registering the pledged securities in the name of the relevant lender, agent, counterparty, custodian or similar party to an Equity Loan, with respect to an Equity Loan as securities intermediary and only to the extent the Investor Parties (or its or their Affiliates) continue to beneficially own such pledged securities, (iv) entering into customary triparty agreements with each lender and the applicable Investor Parties relating to the delivery of the applicable securities to the relevant lender for crediting to the relevant collateral accounts upon funding of the loan and payment of the purchase price including a right for such lender as a third party beneficiary of the Company's obligations hereunder and (v) such other cooperation and assistance as the Investor Parties may reasonably request so long as (x) such cooperation and assistance does not unreasonably disrupt the operation of the Company's business, (y) a Disqualified Holder does not participate directly or indirectly as a lender or other party in such Equity Loan and (z) no material obligations or liabilities are imposed on the Company or its Subsidiaries as a result thereof.

Section 5.14 State Securities Laws. During the Interim Period, the Company shall use its reasonable best efforts (and each Investor shall cooperate with the Company in all respects in connection therewith) to (a) obtain all necessary permits and qualifications, if any, or

secure an exemption therefrom, required by any state or country prior to the offer and sale of the Preferred Stock, the Warrants and the Warrant Shares, and (b) cause such authorization, approval, permit or qualification to be effective as of the Closing (and as of any exercise of the Warrants if at least 15 Business Days' prior written notice of the proposed exercise is given to the Company); provided, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation on the date of this Agreement.

Section 5.15 General Participation Rights; Right of First Refusal for Non-Voting Preferred Stock.

(a) For the purposes of this Section 5.15:

(i) "equity securities" shall include for these purposes Common Stock and any warrants, options or other rights to acquire, or any securities that are exercisable for, exchangeable for or convertible into, Common Stock or any other class of capital stock of the Company (including any preferred stock); and

(ii) " Excluded Stock" shall mean (A) shares of equity securities issued by the Company as a stock dividend payable in shares of equity securities, or upon any subdivision or split-up of the outstanding shares of capital stock, (B) the issuance of shares of equity securities (including upon exercise of options) to directors, employees or consultants of the Company pursuant to the Company Stock Plan or other stock option plan, restricted stock plan or other similar plan approved by the Board, (C) securities issued pursuant to the exercise of the Warrants issued to an Investor or any warrants that are issued and outstanding on the date hereof, (D) shares of equity securities issued as consideration in connection with a "business combination" (as defined by the rules and regulations promulgated by the SEC) or as consideration in connection with bona fide acquisitions of securities or substantially all of the assets of another Person, business unit, division or business, (E) shares of a Subsidiary of the Company issued to the Company or a wholly-owned Subsidiary of the Company, (F) securities of a joint venture (provided that no Affiliate (other than any Subsidiary of the Company) of the Company acquires any interest in such securities in connection with such issuance) or (G) shares of equity securities to a third-party lender in connection with a bona fide borrowing by the Company that is primarily a debt financing transaction.

(b) Until the later of (x) the Investor Parties ceasing to satisfy the 5% Beneficial Holding Requirement and (y) the three (3)-year anniversary of the Closing Date, if the Company or a Subsidiary of the Company proposes to issue equity securities of any kind (other than Excluded Stock) then, the Company shall:

(i) give written notice to each of the Hill Path Investor Parties and the HPS Investor Parties, no less than five (5) Business Days prior to the closing of such issuance, setting forth in reasonable detail (A) the designation and all of the terms and provisions of the securities proposed to be issued (the " Proposed Securities"), including, where applicable, the voting powers, preferences and relative participating, optional or other special rights, and the qualification, limitations or restrictions thereof and interest rate and maturity; (B) the price and

other terms of the proposed sale of such securities; (C) the amount of such securities proposed to be issued; and (D) such other information as any of the Investor Parties may reasonably request in order to evaluate the proposed issuance (except that the Company shall not be required to deliver any information that has not been or will not be provided or otherwise made available to the proposed purchasers of the Proposed Securities); and

(ii) offer to issue and sell to each of the Hill Path Investor Parties and the HPS Investor Parties, on such terms as the Proposed Securities are issued and upon full payment by the applicable Investor Parties, a portion of the Proposed Securities equal to:

(1) with respect to any such equity securities (other than (I) any Excluded Stock or (II) any shares of non-voting preferred stock of the Company), a percentage determined by dividing (A) the number of shares of Common Stock the Hill Path Investor Parties or HPS Investor Parties, respectively, beneficially own (on an as-exercised basis) by (B) the total number of shares of Common Stock then outstanding (on an as-exercised basis); or

(2) with respect to any shares of non-voting preferred stock of the Company (other than any Excluded Stock), 100% of such shares (such percentage in Section 5.15(b)(ii)(1) or Section 5.15(b)(ii)(2), as applicable, the applicable " Participation Portion"), allocated *pro rata* among the Hill Path Investor Parties and the HPS Investor Parties based on their respective ownership of the issued and outstanding shares of Preferred Stock as compared to the total number of shares of Preferred Stock then outstanding;

provided, however, that, in each case and subject to compliance with the terms and conditions set forth in Section 5.15(h), the Company shall not be required to offer to issue or sell to the Investor Parties (or to any of them) the portion of the Proposed Securities that would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law (provided, further, however, that (x) if the number of Proposed Securities to be issued is reduced, then such reduction will be apportioned pro rata among the Hill Path Investor Parties and the HPS Investor Parties and (y) the Company shall still be obligated to provide written notice of such proposed issuance to the Investor Parties pursuant to Section 5.15(b)(i), which notice shall include a description of the Proposed Securities (including the number thereof) that would require stockholder approval in respect of the issuance thereof (the " Restricted Issuance Information")).

(c) Each Investor will have the option, on behalf of its applicable Investor Parties, exercisable by written notice to the Company, to accept the Company's offer and commit to purchase any or all of Proposed Securities up to the applicable Participation Portion corresponding to the type of the Proposed Securities, which notice must be given within five (5) Business Days after receipt of such notice from the Company. The closing of the exercise of such subscription right shall take place simultaneously with the closing of the sale of the Proposed Securities giving rise to such subscription right (or, in the case of a subscription for 100% of the Proposed Securities under Section 5.15(b)(ii)(2), on a date within 30 days after such notice as agreed between the Company and each such Investor); provided, however, that the closing of any purchase by any such Investor Party may be extended beyond the closing of the sale of the Proposed Securities giving rise to such preemptive right (but shall not delay such closing for any

other purchaser) to the extent necessary to (i) obtain required approvals from any Governmental Authority or (ii) permit the Investor Parties to receive proceeds from calling capital pursuant to legally binding written commitments made by its (or its affiliated investment funds') limited partners.

(d) Upon the expiration of the offering period described above, the Company will be free to sell such Proposed Securities that the Investor Parties have not elected to purchase during the ninety (90) days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Investor Parties in the notice delivered in accordance with Section 5.15(b). Any Proposed Securities offered or sold by the Company after such ninety (90)-day period must be reoffered to the Investor Parties pursuant to this Section 5.15.

(e) The election by any Investor Party not to exercise its subscription rights under this Section 5.15 in any one instance shall not affect their right as to any subsequent proposed issuance.

(f) Notwithstanding anything in this Section 5.15 to the contrary, the Company will not be deemed to have breached this Section 5.15 if not later than thirty (30) Business Days following the issuance of any Proposed Securities in contravention of this Section 5.15, the Company or the transferee of such Proposed Securities offers to sell a portion of such equity securities or additional equity securities of the type(s) in question to each Investor Party so that, taking into account such previously-issued Proposed Securities and any such additional Proposed Securities, each Investor Party will have had the right to purchase or subscribe for Proposed Securities in a manner consistent with the allocation and other terms and upon the same economic and other terms provided for in Section 5.15(b) and Section 5.15(c).

(g) In the case of an issuance subject to this Section 5.15 for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the Fair Market Value thereof.

(h) In the event that the Company is not required to offer or reoffer to the Investor Parties any Proposed Securities because such issuance would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law, the Company shall, upon any Investor Parties' reasonable request delivered to the Company in writing within no later than five (5) Business Days following its receipt of the written notice of such issuance to the Investor Parties pursuant to Section 5.15(b)(i) (together with the Restricted Issuance Information), at such Investor Parties' election:

(i) consider and discuss in good faith modifications proposed by any of the Investor Parties to the terms and conditions of such portion of the Proposed Securities which would otherwise be issued to the Investor Parties such that the Company would not be required to obtain stockholder approval in respect of the issuance of such Proposed Securities as so modified; and/or

(ii) solely to the extent that stockholder approval is required in connection with the issuance of equity securities to Persons other than the Investor Parties, take such actions as may be reasonably necessary to seek stockholder approval in respect of the issuance of any Proposed Securities to the Investor Parties.

Section 5.16 Section 16 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction and if an Investor Director is serving on the Board at such time or has served on the Board during the preceding six (6) months, then (i) the Board will pre-approve such disposition of equity securities or derivatives thereof for the express purpose of exempting the Hill Path Investor's, its Affiliates' and the Investor Director's interests (to the extent the Hill Path Investor or its Affiliates may be deemed to be "directors by deputization") in such transaction from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder to the extent its terms and conditions are satisfied and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and capital stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a potential acquisition or deemed acquisition, or disposition or deemed disposition, by the Hill Path Investor, the Investor's Affiliates, the Investor Director of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Hill Path Investor or its Affiliates will serve on the board of directors (or its equivalent) of such other issuer, then if the Hill Path Investor requires that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting the interests of any director or officer of the Company or any of its Subsidiaries in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder to the extent its terms and conditions are satisfied, the Company shall use its commercially reasonable efforts that such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of the Hill Path Investor, its Affiliates and the Investor Directors (for the Hill Path Investor and/or its Affiliates, to the extent such persons may be deemed to be "directors by deputization" of such other issuer) in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder to the extent its terms and conditions are satisfied.

Section 5.17 Information Rights. For so long as the Preferred Stock is outstanding, the Company agrees promptly to provide the Hill Path Investor with the following (except to the extent that such Investor declines in writing, on behalf of its related Investor Parties, to receive such information):

(a) within ninety (90) days after the end of each fiscal year of the Company, (A) an audited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year and (B) audited, consolidated statements of income, comprehensive income, cash flows and changes in shareholders' equity of the Company and its Subsidiaries for such fiscal year; provided, that this requirement shall be deemed to have been satisfied if on or prior to such date the Company files its annual report on Form 10-K for the applicable fiscal year with the SEC;

(b) within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, (A) an unaudited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal quarter and (B) consolidated statements of income, comprehensive income and cash flows of the Company and its Subsidiaries for such

fiscal quarter; provided, that this requirement shall be deemed to have been satisfied if on or prior to such date the Company files its quarterly report on Form 10-Q for the applicable fiscal quarter with the SEC;

(c) copies of all materials (which may include monthly financial information, budget and business plans, and material documents provided to creditors, among others) provided to the Board at substantially the same time as provided to the Board (except for materials withheld for recusal reasons under the last sentence of Section 5.09(i));

(d) copies of all informational documents required to be delivered to the Company's lenders under the applicable loan agreements at substantially the same time as provided to the Lenders; and

(e) such other information (except for information withheld for recusal reasons under the last sentence of Section 5.09(i)) about the Company and its Subsidiaries, or their respective businesses and operations, as such Investor may reasonably request to monitor its investment in the Purchased Securities and the Warrant Shares, so long as providing such information would not interfere unreasonably with the conduct of the business of the Company and its Subsidiaries;

provided, that the Company shall not be obligated to provide such access or materials if the Company determines, in its reasonable judgment, that doing so would reasonably be expected to (A) result in the disclosure of trade secrets or competitively sensitive information to third parties who are not subject to a non-disclosure agreement with the Company, (B) violate applicable Law, an applicable order or a Contract or obligation of confidentiality owing to a third party or (C) jeopardize the protection of an attorney-client privilege, attorney work product protection or other legal privilege (provided, however, that in each such case the Company shall use reasonable efforts to provide alternative, redacted or substitute documents or information in a manner that would not result in the loss of the ability to assert attorney-client privilege, attorney work product protection or other legal privileges).

Section 5.18 Refinancing Request.

(a) Commencing upon the earlier of (i) the fourth anniversary of the Closing Date and (ii) the Mandatory Redemption Date or Fundamental Change Repurchase Date, if the Mandatory Redemption Price (as defined in the Certificate of Designation) is not paid in full on or before such date then, in either case, if any shares of Preferred Stock remain outstanding, the Company shall, upon receipt of a written request from the Hill Path Investor (a "Refinancing Request"), commence and use commercially reasonably efforts to engage in a process (a "Refinancing Process") to explore one or more debt or equity transactions ("Refinancing Transactions") to generate the net proceeds that would be used to redeem all of the shares of Preferred Stock then outstanding at the then applicable Optional Redemption Price (as defined in the Certificate of Designation) in accordance with the terms hereof; provided that, for the avoidance of doubt and notwithstanding anything to the contrary in this Section 5.18, (x) the Hill Path Investor shall not have the right or power to require the Company to, and the Company has no obligation or duty to, consummate a Refinancing Transaction and (y) the decision of whether or not to consummate a Refinancing Transaction is subject to the determination of the disinterested

members of the Board (which does not include any Investor Director for this purpose) in compliance with their fiduciary duties.

(b) Upon receipt of a Refinancing Request, the Company shall commence a Refinancing Process in good faith under the supervision and control of the Board, which process shall be undertaken in consultation with the Hill Path Investor, which shall include (A) selecting, in consultation with the Hill Path Investor, a nationally-recognized investment banking firm experienced in similar transactions in the industry in which the Company and its Subsidiaries are engaged to assist the Company with respect to a Refinancing Transaction (the "Investment Bank"), (B) cooperating with the Investment Bank and the Hill Path Investor in the evaluation of such Refinancing Transactions, (C) facilitating a customary due diligence process in respect of any such Refinancing Transaction, including establishing, populating and maintaining an online "data room," (D) executing customary and reasonable documents for the purpose of exploring the possibility of a Refinancing Transaction, such as confidentiality agreements; *provided*, for confirmation, this clause (D) does not require the execution of any term sheet, letter of intent, exclusivity agreement or definitive documentation with respect to a Refinancing Transaction (all of which shall require the prior approval of the disinterested members of the Board (which does not include any Investor Director for this purpose) in compliance with their fiduciary duties), and (E) providing any financial or other information or audit reasonably required by the proposed lender's or other financing sources. The Company and the Board shall keep the Hill Path Investor informed with respect to the Refinancing Process and any Refinancing Transaction, including by providing (x) copies of marketing materials, proposals received, outreach plans and "banker books" and (y) such other information with respect to the Refinancing Process and any Refinancing Transaction as the Hill Path Investor may reasonably request.

(c) If the Mandatory Redemption Price is not paid in full on or before the Mandatory Redemption Date or Fundamental Change Repurchase Date, the Hill Path Investor shall have the right in consultation with the Board to direct the Refinancing Process, including by (A) selecting and engaging any alternative investment bank, legal, financial or other advisors in connection with such process and interfacing with such advisors in connection with such Refinancing Process at the expense of the Company, (B) negotiating with potential lenders or other potential counterparties and Refinancing Transaction participants and (C) selecting and recommending to the Board for approval a Refinancing Transaction; provided that, for the avoidance of doubt and notwithstanding anything to the contrary in this Section 5.18, (x) the Hill Path Investor shall not have the right or power to require the Company to, and the Company has no obligation or duty to, consummate a Refinancing Transaction and (y) the decision of whether or not to consummate a Refinancing Transaction is subject to the determination of the disinterested members of the Board (which does not include any Investor Director for this purpose) in compliance with their fiduciary duties. The Company shall provide reasonable cooperation with the Hill Path Investor in connection with the Refinancing Process, including as set forth in the immediately preceding paragraph. The Company shall reimburse the Hill Path Investor and its Affiliates for reasonable costs and expenses incurred by any of them on behalf of the Company and for the Company's benefit in connection with directing the Refinancing Process pursuant to this Section 5.18(c).

(d) For the avoidance of doubt, nothing in this Section 5.18 shall require the Company to pursue or effect a transaction that would result in a Change in Control of the Company.

Section 5.19 Right to Cure. Notwithstanding anything to the contrary contained in this Agreement, in the event that prior to the Closing the Company or any of its Subsidiaries incur any indebtedness that will remain outstanding on the Closing Date after giving effect to the Transactions (the "Subject Debt") and such Subject Debt would breach Section 5.01 hereof or Section 10 of the Debt Commitment Letter (the "Cure Trigger Event"), the Company shall promptly (and in any event, no later than two days after the occurrence of such Cure Trigger Event and at least three Business Days prior to the Closing Date) notify the Investors of such Cure Trigger Event, and the Company shall have until the earlier of (i) ten days thereafter and (ii) two Business Days prior to the Closing Date to repay all such Subject Debt (from existing cash and/or other sources of raising cash ("Company Cure"), so long as the sources do not result in new Subject Debt or equity securities which would breach Section 5.01 hereof or Section 10 of the Debt Commitment Letter) (the "Company Cure Period"). During the Company Cure Period, the Company shall keep the Investors reasonably informed regarding the status of the Company Cure. Following receipt of notice of a Cure Trigger Event and if the Company declines or fails to repay all such Subject Debt during the Company Cure Period, the Hill Path Investors shall have the right, but not any obligation, at their sole option (the "Investor Cure Option") to require the Company to issue additional Preferred Stock on the terms and subject to the conditions contemplated by this Agreement, including the issuance of a pro rata amount of the Warrants, in an amount that will provide additional net proceeds in an amount sufficient to repay all such Subject Debt on or prior to the Closing Date (all such additional Preferred Stock and Warrants issued pursuant to this Section 5.19, the "Additional Purchased Securities"). Such Additional Purchased Securities shall be issued concurrently with the Purchased Securities otherwise issuable under this Agreement, and the Company shall substantially concurrently apply the net proceeds of such Additional Purchased Securities to repay the Subject Debt. If the Hill Path Investors may exercise their Investor Cure Option by delivery of written notice to the Company at any time at least one Business Day prior to the Closing Date and upon exercise of the Investor Cure Option all references in this Agreement to Purchased Securities shall include the Additional Purchased Securities unless the context otherwise requires.

Section 5.20 Real Property Holding Corporation. Between the date hereof and the Closing, the Company and the Hill Path Investor agree to reasonably cooperate, to the extent requested by the Hill Path Investor, regarding an analysis of whether the Company is a United States real property holding corporation within the meaning of Section 897 of the Code.

ARTICLE VI

Conditions to Closing

Section 6.01 Conditions to the Obligations of the Company and the Investors. The respective obligations of each of the Company and the Investors to effect the Closing shall be

subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following condition:

(a) no temporary or permanent Judgment shall have been enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority nor shall any proceeding brought by a Governmental Authority seeking any of the foregoing be pending, or any applicable Law shall be in effect, in each case which has the effect of restraining, enjoining or otherwise prohibiting the consummation of the Transactions (collectively, " Restraints").

Section 6.02 Conditions to the Obligations of the Company. The obligations of the Company to effect the Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) the representations and warranties of each Investor set forth in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same effect as though made on and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date);

(b) each Investor shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement at or prior to the Closing; and

(c) the Company shall have received a certificate, signed on behalf of each Investor by an executive officer thereof, certifying that the conditions set forth in Section 6.02(a) and Section 6.02(b) have been satisfied.

Section 6.03 Conditions to the Obligations of the Investors. The obligation of each Investor to effect the Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) the representations and warranties of the Company (i) set forth in Section 3.01(a), Section 3.02 and Section 3.03 (collectively, the " Fundamental Representations") shall be true and correct (disregarding all qualifications or limitations as to "materiality", "Material Adverse Effect" and words of similar import set forth therein) in all material respects as of the date hereof and as of the Closing Date with the same effect as though made as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date); set forth in Section 3.06(a) shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made as of the date hereof; and (iii) set forth in this Agreement (other than the Fundamental Representations and Section 3.06(a)) shall be true and correct (disregarding all qualifications or limitations as to "materiality", "Material Adverse Effect" and words of similar import set forth therein) as of the date hereof and as of the Closing Date with the same effect as though made as of the date hereof and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except, in the case of this clause (iii), where the failure to be true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(b) the Company shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement

at or prior to the Closing and shall have complied in all respects with its obligations under Section 5.19;

(c) no Material Adverse Effect shall have occurred since the date of this Agreement;

(d) each Investor shall have received a certificate, signed on behalf of the Company by an executive officer thereof, certifying that the conditions set forth in Section 6.03(a) - (c) have been satisfied;

(e) the Board shall have taken all actions necessary and appropriate to appoint to the Board, effective immediately upon the Closing, the initial Investor Director Designees;

(f) the Company shall have duly adopted and filed with the Secretary of State of the State of Delaware the Certificate of Designation, and a certified copy thereof shall have been delivered to each Investor;

(g) the Acquisition shall be consummated substantially concurrently with the purchase and sale of the Purchased Securities pursuant to Section 2.02 (x) in all material respects in accordance with the Acquisition Agreement and subject to compliance with Section 5.12 and (y) utilizing the Debt Financing pursuant to the Debt Commitment Letter (each as defined in the Acquisition Agreement), or, if the Debt Financing Sources (as defined in the Acquisition Agreement) under the Debt Commitment Letter are not ready, willing and able to fund the Debt Financing pursuant to the terms thereof in connection with the consummation of the transactions contemplated by the Acquisition Agreement, then utilizing such Alternate Financing (as defined in the Acquisition Agreement) on terms which shall be in all material respects accordance with the terms set forth in the Debt Commitment Letter (after giving effect to any modifications, amendments, consents or waivers thereto by the Company, other than those modifications, amendments, consents or waivers that are materially adverse to the interests of the holders of the Preferred Stock in their capacities as such, unless consented to in writing by Hill Path (such consent not to be unreasonably withheld, delayed or conditioned) (and in any case, which modifications, amendments, consents or waivers which would be in compliance with the terms of the Certificate of Designation if such Alternate Financing was incurred immediately following the issuance of the Preferred Stock hereunder); and

(h) the NASDAQ shall have been notified with respect to the issuance of any Warrant Shares, subject to official notice of issuance.

ARTICLE VII

Termination; Survival

Section 7.01 Termination Prior to Closing. This Agreement may only be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and the Hill Path Investor;

(b) by either the Company or the Hill Path Investor upon written notice to the other, if the Closing has not occurred on or prior to July 26, 2024 (or any later Outside Date (as defined in the Acquisition Agreement and as it may extended in accordance with Section 5.12) (the " Termination Date"); provided, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any party if the breach by such party of its representations and warranties set forth in this Agreement or the failure of such party to perform any of its obligations under this Agreement has been a principal cause of or primarily resulted in the events specified in this Section 7.01(b);

(c) by either the Company or the Hill Path Investor if any Restraint enjoining or otherwise prohibiting consummation of the Transactions at the Closing shall be in effect and shall have become final and non-appealable prior to the Closing Date; provided, that the right to terminate this Agreement pursuant to this Section 7.01(c) will not be available to any party that has breached in any material respect any provision of this Agreement in any manner that was the primary cause of the Restraint;

(d) by the Hill Path Investor if the Company shall have breached any of its representations or warranties or failed to perform any of its covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 6.03(a) or Section 6.03(b) to be satisfied at the Closing and (ii) is incapable of being cured prior to the Termination Date, or if capable of being cured, shall not have been cured within thirty (30) calendar days (but in no event later than the Termination Date) following receipt by the Company of written notice of such breach or failure to perform from the Hill Path Investor stating the Hill Path Investor's intention to terminate this Agreement pursuant to this Section 7.01(d) and the basis for such termination; provided, that the Hill Path Investor shall not have the right to terminate this Agreement pursuant to this Section 7.01(d) if the Hill Path Investor is then in material breach of any of its representations, warranties, covenants or agreements hereunder which breach would give rise to the failure of a condition set forth in Section 6.02(a) or Section 6.02(b); or

(e) by the Company if the Hill Path Investor shall have breached any of its representations or warranties or failed to perform any of its covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 6.02(a) or Section 6.02(b) to be satisfied at the Closing and (ii) is incapable of being cured prior to the Termination Date, or if capable of being cured, shall not have been cured within thirty (30) calendar days (but in no event later than the Termination Date) following receipt by the Hill Path Investor of written notice of such breach or failure to perform from the Company stating the Company's intention to terminate this Agreement pursuant to this Section 7.01(e) and the basis for such termination; provided, that the Company shall not have the right to terminate this Agreement pursuant to this Section 7.01(e) if the Company is then in material breach of any of its representations, warranties, covenants or agreements hereunder which breach would give rise to the failure of a condition set forth in Section 6.03(a) or Section 6.03(b).

Section 7.02 Effect of Termination Prior to Closing. In the event of the termination of this Agreement as provided in Section 7.01, written notice thereof shall be given to the other party, specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void (other than Section 5.04, Section 5.05, this

Section 7.02 and Article VIII, all of which shall survive termination of this Agreement and the Confidentiality Agreement (which shall survive in accordance with its terms)), and there shall be no liability on the part of any Investor or the Company or their respective directors, officers and Affiliates in connection with this Agreement, except that no such termination shall relieve any party from liability for damages (as determined by a court of competent jurisdiction in accordance with Delaware law) for Willful Breach or Fraud.

Section 7.03 Survival. All of the covenants or other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance; provided, that the covenants or other agreements of the parties contained in this Agreement that by their terms are to be performed prior to the Closing shall survive the Closing for twelve (12) months following the Closing. All representations and warranties contained in this Agreement (including the schedules and the certificates delivered pursuant hereto) will survive the Closing Date, with respect to the representations and warranties made at the Closing Date until the twelve (12) month anniversary of the Closing; provided, that the Fundamental Representations shall survive the Closing until the sixth anniversary of the Closing Date; provided, further that nothing herein shall relieve any party of liability for any inaccuracy or breach of such representation or warranty to the extent that any good faith allegation of such inaccuracy or breach is made in writing prior to such expiration by a Person entitled to make such claim pursuant to the terms and conditions of this Agreement. For the avoidance of doubt, claims may be made with respect to the breach of any representation, warranty or covenant until the applicable survival period therefor as described above expires. Notwithstanding anything in this Agreement to the contrary, subject to Section 8.13, (a) in no event will the Investor Related Parties, collectively, have any liability (including damages for fraud or breach, whether willful, intentional, unintentional or otherwise (including Willful Breach) or monetary damages in lieu of specific performance) in the aggregate in excess of the amount of the Purchase Price, and (b) in the event the Closing occurs, in no event will the Company Related Parties, collectively, have any liability in the aggregate in excess of the amount of the Purchase Price, except in the case of Fraud.

ARTICLE VIII

Miscellaneous

Section 8.01 Amendments; Waivers. Subject to compliance with applicable Law, this Agreement may be amended or supplemented in any and all respects only by written agreement of the parties hereto.

Section 8.02 Extension of Time, Waiver, Etc. The Company and the Hill Path Investor may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of the Company on the one hand and the Investors on the other hand contained herein or in any document delivered pursuant hereto, (b) extend the time for the performance of any of the obligations or acts of the Company on the one hand and the Investors on the other hand or (c) waive compliance by the Company on the one hand and the Investors on the other hand with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of the conditions of the Company on the one hand or of the Investors on the other hand. Notwithstanding the foregoing, no failure or delay by the Company or an Investor in

exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.03 Assignment; Termination. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto, which consent may be may withhold in its sole discretion; provided, however, that (a) without the prior written consent of the Company, an Investor or any Investor Party may assign its rights, interests and obligations under this Agreement, in whole or in part, to one or more Permitted Affiliate Transferees, so long as the assignee shall agree in writing to be bound by the provisions of this Agreement, including the rights, interests and obligations so assigned, and (b) if the Company consolidates or merges with or into any Person and the Common Stock or Preferred Stock is, in whole or in part, converted into or exchanged for securities of a different issuer in a transaction that does not constitute a Change in Control, then as a condition to such transaction the Company will cause such issuer to assume all of the Company's rights and obligations under this Agreement in a written instrument delivered to the Investors; provided, further that no such assignment under clause (a) above will relieve an Investor of its obligations hereunder prior to the Closing. Subject to the immediately preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary herein, upon the Transfer of all of the Preferred Stock held by the Hill Path Investor Parties to any Person (other than a Permitted Affiliate Transferee which is Affiliated with Hill Path), this Agreement shall, without the necessity of any further action by any party hereto, terminate in full and cease to have any further legal force or effect, and each party hereto shall be relieved of any further obligations, liabilities or duties hereunder.

Section 8.04 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 8.05 Entire Agreement; No Third-Party Beneficiaries. This Agreement, including the Company Disclosure Letter, together with the Confidentiality Agreement, the Expense Reimbursement Side Letter, the other Transaction Documents and the Certificate of Designation, constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder; provided, that (i) Section 5.09(g) shall be for the benefit of and fully enforceable by each Hill Path Entity and the Investor Directors, (ii) each of Section 5.03, Section 5.09 and Section 5.16 shall be for the benefit of and fully enforceable by the Hill Path Fund; (iii) Section 8.13 shall be for the benefit of and fully enforceable by each of the Investor Related Parties; and (iv) the Hill Path Equity Commitment Letter shall be for the benefit of and fully enforceable by each Person specified therein (subject to its terms and conditions).

Section 8.06 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of Laws principles.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 8.06 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 8.09 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

Section 8.07 Specific Enforcement.

(a) The parties hereto agree that irreparable damage for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement or any other Transaction Document is not performed in accordance with its specific terms or is otherwise breached, including if the parties hereto fail to take any action required of them hereunder or thereunder to cause the Closing to occur. The parties acknowledge and agree that (a) the parties shall be entitled to seek an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement or any other Transaction Document and to enforce specifically the terms and provisions hereof and thereof (including, for the avoidance of doubt, the right of each party to cause the Closing to be consummated on the terms and subject to the conditions set forth in this Agreement (and including the right to and in the Hill Path Equity Commitment Letter, subject to Section 6 of the Hill Path Equity Commitment Letter) in the courts described in Section 8.06 without proof of damages or otherwise (in each case, subject to the terms and conditions of this Section 8.07), this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific enforcement is an integral part of the Transactions and without that right, neither the Company nor the Investors would have entered into this Agreement. The parties hereto agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement

in accordance with this Section 8.07 shall not be required to provide any bond or other security in connection with any such order or injunction.

(b) Notwithstanding the foregoing, it is explicitly agreed that the Company shall be entitled to an injunction, specific performance or other equitable remedies in connection with enforcing each Investor's obligations to cause the Hill Path Financing to be funded on the terms and conditions of the Hill Path Equity Commitment Letter if and only if each of the following is satisfied: (i) all conditions set forth in Sections 6.01 and 6.03 (other than those conditions that by their nature are to be satisfied by actions taken at the Closing, provided that such conditions shall have been capable of being satisfied if the Closing were to have occurred at the time provided by Section 2.02) have been satisfied at the time when the Closing would have occurred but for the failure of the Hill Path Financing to be funded, and (ii) the Company has irrevocably confirmed by written notice to the applicable Hill Path Investor that, if specific performance is granted and the Hill Path Financing is funded, the Company would take such actions required of it by this Agreement to cause the Closing to occur; provided, that such conditions shall not apply to the right of the Company to an injunction, specific performance or other equitable remedies for any other reason; provided, further, that under no circumstances shall the Company or any of its Affiliates be permitted or entitled to receive both a grant of specific performance that results in the Closing occurring pursuant to this Section 8.07(b) and the payment of monetary damages (other than solely to the extent Closing occurs, solely with respect to any post-Closing obligations of the Hill Path Investor).

Section 8.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 8.08.

Section 8.09 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

The ONE Group Hospitality, Inc.

1624 Market Street, Suite 311
Denver, Colorado 80202
Attention: Chief Executive Officer and Chief Financial Officer
Email: LegalNotices@togrp.com

with a copy to (which shall not constitute notice):

Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Attention: Steven H. Hull; Will Goodling
Email: steven.hull@stoel.com; will.goodling@stoel.com

(b) If to the Hill Path Investor or any Hill Path Investor Party, to the Hill Path Investor at:

HPC III Kaizen LP
150 East 58th Street 32nd Floor
New York, NY 10155
Attention: James Chambers
Email: chambers@Hillpathcap.com

with a copy to (which will not constitute notice):

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Tracey A. Zaccone;
Matthew B. Rogers
Email: tracey.zaccone@stblaw.com;
mrogers@stblaw.com

(c) If to the HPS Investor or any HPS Investor Party, to the HPS Investor at:

HPS Investment Partners, LLC
40 West 57th Street
New York, NY 10019
Attention: Daniel Zevnik
Email: daniel.zevnik@hpspartners.com

with a copy to (which will not constitute notice):

Milbank LLP
55 Hudson Yards
New York, NY 10001-2163
Attention: John Britton
Email: JBritton@milbank.com

or such other address or email address as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 8.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law.

Section 8.11 Expenses. Except as otherwise expressly provided herein, in the Expense Reimbursement Side Letter or in any other Transaction Document, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such costs and expenses, whether or not any Closing shall have occurred. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement or any other Transaction Document, or the enforcement of the any party's rights hereunder or thereunder, the substantially prevailing party shall be entitled to recover from the other party all of its reasonable expenses, including reasonable and documented attorneys' and accountants' fees.

Section 8.12 Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Whenever the words "ordinary course of business" are used in this Agreement, they shall be deemed to be followed by the words "consistent with past practice". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless the context requires otherwise. The words "date hereof" when used in this Agreement shall refer to the date of this Agreement. The terms "or", "any" and "either" are not exclusive. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The word "will" shall be constructed to have the same meaning and affect as the word "shall". All accounting terms used and not defined herein shall have the respective meanings given to them under GAAP. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the

singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. In the event that the Common Stock is listed on a national securities exchange other than the NASDAQ, all references herein to NASDAQ shall be deemed to be references to such other national securities exchange. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise specifically indicated, all references to "dollars" or "$" shall refer to the lawful money of the United States. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day).

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement.

Section 8.13 Non-Recourse.

(a) Each party hereto agrees, on behalf of itself and its Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that all Actions, claims, obligations, liabilities or causes of action (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (A) this Agreement or any other Transaction Document, or any of the transactions contemplated hereunder or thereunder (including the Financing), (B) the negotiation, execution or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement or any of the other Transaction Documents), (C) any breach or violation of this Agreement or any other of the other Transaction Documents and (D) any failure of any of the transactions contemplated hereunder or under any of the other Transaction Documents or any other agreement referenced herein or therein (including the Financing) to be consummated, in each case, may be made only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement or, in the case of any of the other Transaction Documents, Persons that are expressly identified as parties to such other Transaction Documents and in accordance with, and subject to the terms and conditions of this Agreement or such other Transaction Documents, as applicable.

(b) In furtherance and not in limitation of the foregoing and notwithstanding anything contained in this Agreement or any of the other Transaction Documents to the contrary, each party hereto covenants, agrees and acknowledges on behalf of itself and its

respective Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that no recourse under this Agreement or any of the other Transaction Documents or in connection with any of the transactions contemplated hereunder or thereunder (including the Financing) shall be sought or had against any Person other than the parties hereto, including any Investor Related Party (other than the Investors)), and no Person other than the parties thereto, including any Investor Related Party (other than the Investors), shall have any liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), in each case, except for claims that the Company or the Investor Parties, as applicable, may assert (subject, with respect to the following clause (ii), in all respects to the limitations set forth in Section 7.02, Section 8.07 and this Section 8.13): (i) against any Person that is party to and solely pursuant to the terms and conditions of, the Confidentiality Agreement, (ii) against the Hill Path Fund for specific performance of the Hill Path Fund's obligation to fund its committed portion of the Hill Path Financing thereunder solely in accordance with, and pursuant to the terms and conditions of Section 6 of the Hill Path Equity Commitment Letter or (iii) against the Investor Parties who are party hereto solely in accordance with, and pursuant to the terms and conditions of, this Agreement.

(c) The obligations of the Hill Path Investor and the Hill Path Investor Parties, on the one hand, and the HPS Investor and the HPS Investor Parties, on the other hand, are several and not joint and several, and no Hill Path Investor or Hill Path Investor Party, on the one hand, or HPS Investor or HPS Investor Party, on the other hand, shall be liable for any breach or non-performance of this Agreement by the other.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

THE ONE GROUP HOSPITALITY, INC.

By: /s/ Emanuel Hilario
Name: Emanuel Hilario
Title: President and Chief Executive Officer

[*Signature Page to Investment Agreement*]

HPC III KAIZEN LP

By: **HILL PATH CAPITAL PARTNERS III GP LLC** , its General Partner

By:/s/ Scott Ross
Name: Scott Ross
Title: Authorized Signatory

[*Signature Page to Investment Agreement*]

HPS INVESTMENT PARTNERS, LLC

By:/s/ Andersen Fisher
Name: Andersen Fisher
Title: Managing Director

[*Signature Page to Investment Agreement*]

Exhibit A
Acquisition Agreement

Exhibit B
Form of Certificate of Designation

Exhibit C-1
Form of Penny Warrant Agreement

Exhibit C-2
Form of Market Warrant Agreement

Exhibit D
Hill Path Equity Commitment Letter

Exhibit E
Form of Registration Rights Agreement

Schedule I
Disqualified Holder

Schedule II
Purchased Security Allocation

Investor	Preferred Stock	Penny Warrants*	Market Warrants
Hill Path Investor	150,000 shares	5.00% of the fully diluted shares of Common Stock as of immediately prior to the Closing and after giving effect to the issuance of the Penny Warrants	Warrants to purchase, in the aggregate, 1,000,000 shares of Common Stock (subject to adjustment in accordance with the terms thereof)
HPS Investor	10,000 shares	0.33% of the fully diluted shares of Common Stock as of immediately prior to the Closing and after giving effect to the issuance of the Penny Warrants	Warrants to purchase, in the aggregate, 66,667 shares of Common Stock (subject to adjustment in accordance with the terms thereof)

*For this purpose, fully diluted shares of Common Stock means: (a) the number of all outstanding shares of common stock (excluding any held by the Company in treasury), plus (b) the number of all outstanding stock options (both vested and unvested), plus (c) the number of all outstanding unvested RSUs and PSUs, plus (d) the number of shares issuable under the Penny Warrants. This calculation does not include, for confirmation, shares reserved but not issued and outstanding under the Company 2019 Equity Incentive Plan. For an illustration, if this calculation were completed using the outstanding shares of Common Stock (as of February 29, 2024) and outstanding stock options (both vested and unvested) and unvested RSUs and PSUs of the Company (in each case as of December 31, 2023), in each case as specified in the Company's Form 10-K filed on March 14, 2024, then 1,762,865 and 117,524 shares of Common Stock would be issuable under the Penny Warrants issued to the Hill Path Investor and HPS Investor, respectively. This calculation will be updated as of immediately prior to closing under the same methodology.

Form of

The ONE Group Hospitality, Inc.

Certificate of Designations of

Series A Preferred Stock

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Certificate of Designations of

Series A Preferred Stock

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the "**DGCL**"), on March 26, 2024, the Board of Directors of The ONE Group Hospitality, Inc., a corporation duly organized and validly existing under the DGCL (the "**Company**"), adopted the following resolution designating and creating, out of the authorized and unissued shares of Preferred Stock of the Company, 160,000 authorized shares of a series of Preferred Stock of the Company titled the "Series A Preferred Stock" in accordance with the provisions of Section 103 thereof:

RESOLVED that, pursuant to the authority of the Board of Directors pursuant to the Certificate of Incorporation, the Bylaws and applicable law, a series of Preferred Stock of the Company titled the "Series A Preferred Stock," and having a par value of $0.0001 per share and an initial number of authorized shares equal to one hundred sixty thousand (160,000), is hereby designated and created out of the authorized and unissued shares of Preferred Stock of the Company, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

Section 1. Definitions.

"**Accumulated Liquidation Preference**" means the Initial Liquidation Preference per share of Preferred Stock plus any and all Compounded Dividends.

"**Affiliate**" of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person; provided, however, that (i) the Company and its Subsidiaries, on the one hand, and any Investor Party or any of its Affiliates, on the other hand, shall not be deemed to be Affiliates, and (ii) in no event shall any of the Investor Parties or any their respective Subsidiaries be considered an Affiliate of any portfolio company or investment fund affiliated with or managed by affiliates of Hill Path or HPS, nor shall any other portfolio company or investment fund affiliated with or managed by affiliates of Hill Path or HPS be considered to be an Affiliate of an Investor Party or any of their respective Affiliates.

"**Applicable Additional Amount**" has the meaning set forth in **Section 7(b)(ii)(1)**.

"**Board of Directors**" means the Company's board of directors.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Bylaws**" means the Bylaws of the Company, adopted as of October 24, 2011, as the same may be further amended or restated.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case, however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Certificate**" means a Physical Certificate or an Electronic Certificate.

"**Certificate of Designations**" means this Certificate of Designations, as amended from time to time.

"**Certificate of Incorporation**" means the Company's Amended and Restated Certificate of Incorporation, as the same has been and may be further amended or restated.

"**Change of Control**" means any of the following events, whether in a single transaction or a series of related transactions:

(a) a "person" or "group" (within the meaning of Sections 13(d) and 14(d)(2) of the Exchange Act), directly or indirectly, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), shall have become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of voting stock of the Company entitled to exercise more than 50% of the total voting power of all outstanding voting stock of the Company (including any right to acquire voting stock that is not then outstanding of which such person or group is deemed the beneficial owner);

(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Company and the Company's Wholly Owned Subsidiaries taken as a whole to a Person, other than a Company's Wholly Owned Subsidiary;

(c) the adoption of a plan relating to the liquidation or dissolution of the Company or any Material Subsidiary unless such Material Subsidiary's assets are distributed only to the Company or a Wholly Owned Subsidiary of the Company in such liquidation or dissolution; or

(d) the Company or any Material Subsidiary becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or has taken any action for the purpose of effecting, in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment.

For the purposes of this definition, whether a Person is a "**beneficial owner**", whether shares are "**beneficially owned**", and percentage beneficial ownership, will be determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act.

"**Change of Control Repurchase Calculation Date**" has the meaning set forth in **Section 8(d)(ii)**.

"**Change of Control Repurchase Date**" means the date fixed, pursuant to **Section 8(c)**, for the repurchase of any Preferred Stock by the Company pursuant to a Repurchase Upon Change of Control.

"Change of Control Repurchase Date Liquidation Preference" has the meaning set forth in **Section 8(d)(i)**.

"**Change of Control Repurchase Price**" means the cash price payable by the Company to repurchase any share of Preferred Stock upon its Repurchase Upon Change of Control, calculated pursuant to **Section 8(d)**.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company.

"**Company**" has the meaning set forth in the preliminary paragraph hereto.

"**Compounded Dividends**" has the meaning set forth in Section 5(a).

"**Consolidated Non-Wholly Owned Subsidiary**" means a Subsidiary of the Company that is not a Wholly Owned Subsidiary of the Company but is consolidated with the Company and its Wholly Owned Subsidiaries for GAAP purposes.

"**Default Dividend**" any Dividend payable at the Default Dividend Rate.

"**Default Dividend Rate**" means, with respect to the Preferred Stock, as of any time of determination, the then-applicable Regular Dividend Rate plus 200 basis points (i.e. adding two percentage points to the then-applicable Regular Dividend Rate).

"**DGCL**" has the meaning set forth in the preliminary paragraph hereto.

"**Dividend**" means any Regular Dividend and any Default Dividend.

"**Dividend Rights**" means the Holders' rights under **Section 5**.

"**Dividend Junior Securities**" means any securities issued by the Company, the terms of which would result in such securities ranking junior to the Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). Dividend Junior Securities includes the Common Stock. For the avoidance of doubt, Dividend Junior Securities will not include any securities of the Company's Subsidiaries.

"**Dividend Parity Securities**" means any securities issued by the Company (other than the Preferred Stock), the terms of which would result in such securities ranking equally with the Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Parity Securities will not include any securities of the Company's Subsidiaries.

"**Dividend Payment Date**" means each Regular Dividend Payment Date with respect to a Regular Dividend.

"**Dividend Senior Securities**" means any securities issued by the Company, the terms of which would result in such securities ranking senior to the Preferred Stock with respect to the

payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Senior Securities will not include any securities of the Company's Subsidiaries.

"**Electronic Certificate**" means any electronic book entry maintained by the Transfer Agent that evidences any share(s) of Preferred Stock.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**First Call Date**" means the date that is the third anniversary of the Initial Issue Date.

"**Final Change of Control Notice**" has the meaning set forth in **Section 8(f)**.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect on the date of any calculation or determination required hereunder.

"**Hill Path**" means Hill Path Capital LP.

"**Hill Path Investor**" means HPC III Kaizen LP., a Delaware limited partnership together with its successors and any Affiliate that becomes a party to the Investment Agreement pursuant to the terms thereto.

"**Hill Path Investor Parties**" means the Hill Path Investor and each Affiliate of the Hill Path Investor to whom shares of Preferred Stock are transferred in accordance with the Investment Agreement.

"**Holder**" means a person in whose name any Preferred Stock is registered on the Registrar's books.

"**HPS**" means HPS Investment Partners, LLC, a Delaware limited liability company.

"**HPS Investor**" means HPS together with its successors and any Affiliate that becomes a party to the Investment Agreement pursuant to the terms thereto.

"**HPS Investor Parties**" means the HPS Investor and each Affiliate of the HPS Investor to whom shares of Preferred Stock are transferred in accordance with the Investment Agreement.

"**Initial Change of Control Notice**" has the meaning set forth in **Section 8(e)**.

"**Initial Issue Date**" means the Closing Date (as defined in the Investment Agreement).

"**Initial Liquidation Preference**" means one thousand dollars ($1,000.00) per share of Preferred Stock.

"**Investment Agreement**" means that certain Investment Agreement by and among the Company and the Investors, dated as of March 26, 2024, as it may be amended, supplemented or otherwise modified from time to time, providing for the purchase and sale of the Preferred Stock and the Warrants and certain other terms relating to the rights of the Holders and the Company.

"**Investors**" has the meaning set forth in the Investment Agreement.

"**Investor Parties**" means each of the Hill Path Investor Parties and the HPS Investor

Parties.

"**Investor Transfer Event**" means the transfer of all shares of Preferred Stock held by the Hill Path Investor Parties to Persons that are not Affiliates of the Hill Path Investor Parties.

"**Liquidation Event**" has the meaning set forth in **Section 6(a)**.

"**Liquidation Junior Securities**" means any securities issued by the Company, the terms of which would result in such securities ranking junior to the Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. Liquidation Junior Securities includes the Common Stock. For the avoidance of doubt, Liquidation Junior Securities will not include any securities of the Company's Subsidiaries.

"**Liquidation Rights**" means the Holders' rights under **Section 4** and **Section 6**.

"**Liquidation Parity Securities**" means any securities issued by the Company (other than the Preferred Stock), the terms of which would result in such securities ranking equally with the Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Parity Securities will not include any securities of the Company's Subsidiaries.

"**Liquidation Preference**" means, with respect to the Preferred Stock, an amount equal to the Accumulated Liquidation Preference plus accrued and unpaid Dividends that have not yet been compounded and added to the Accumulated Liquidation Preference.

"**Liquidation Senior Securities**" means any securities issued by the Company, the terms of which would result in such securities ranking senior to the Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Senior Securities will not include any securities of the Company's Subsidiaries but will include any preferred securities of the Company that have or could have a maturity date or mandatory redemption date (whether upon acceleration or otherwise) that is earlier than the Mandatory Redemption Date.

"**Majority Holders**" has the meaning set forth in **Section 7(a)**.

"**Make-Whole Premium**" has the meaning set forth in **Section 7(b)(ii)(2)**.

"**Mandatory Redemption**" has the meaning set forth in **Section 7(a)**.

"**Mandatory Redemption Date**" has the meaning set forth in **Section 7(a)(i)**.

"**Mandatory Redemption Failure Event**" means the failure by Company to pay the Mandatory Redemption Price when due in accordance with **Section 7** in respect of any of the outstanding shares of Preferred Stock.

"**Mandatory Redemption Price**" means the consideration payable by the Company to redeem any Preferred Stock upon its Mandatory Redemption, calculated pursuant to **Section 7(a)(ii)**.

"**Material Indebtedness**" means indebtedness for borrowed money of the Company or any Subsidiary in excess of $25,000,000.

"**Material Subsidiary**" means any Subsidiary of the Company constituting greater than 5.0% of the Consolidated EBITDA (as defined in the Senior Credit Agreement) or 5.0% of gross revenues of the Company and its consolidated Subsidiaries, or any group of Subsidiaries of the Company taken together as a group, constituting greater than 10.0% of the Consolidated EBITDA or 10.0% of gross revenues of the Company and its consolidated Subsidiaries.

"**Net Leverage Ratio**" means Consolidated Total Net Leverage Ratio as defined in the Senior Credit Agreement.

"**Officer**" means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

"**Optional Redemption**" has the meaning set forth in **Section 7(b)**.

"**Optional Redemption Date**" means the date fixed, pursuant to **Section 7(b)(i)**, for the settlement of the redemption of the Preferred Stock by the Holder pursuant to an Optional Redemption.

"**Optional Redemption Date Liquidation Preference**" has the meaning set forth in **Section 7(b)(ii)(2)**.

"**Optional Redemption Price**" means the consideration payable by the Company to redeem any Preferred Stock upon its Optional Redemption, calculated pursuant to **Section 7(b)(ii)**.

"**Paying Agent**" has the meaning set forth in **Section 3(f)(i)**.

"**Person**" or "**person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "person" under this Certificate of Designations.

"**Physical Certificate**" means any certificate (other than an Electronic Certificate) evidencing any share(s) of Preferred Stock, which certificate is substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such share(s) and duly executed by the Company and countersigned by the Transfer Agent.

"**Preferred Stock**" has the meaning set forth in **Section 3(a)**.

"**Record Date**" means, with respect to any dividend or distribution on, or issuance to holders of, Preferred Stock, the date fixed (whether by law, contract or the Board of Directors or otherwise) to determine the Holders or the holders of Preferred Stock that are entitled to such dividend, distribution or issuance.

"**Redemption Notice**" has the meaning set forth in **Section 7(c)**.

"**Redemption Notice Date**" means the date on which the Company sends the Redemption Notice for a Mandatory Redemption or Optional Redemption pursuant to **Section 7(c)**.

"**Register**" has the meaning set forth in **Section 3(f)(ii)**.

"**Registrar**" has the meaning set forth in **Section 3(f)(i)**.

"**Regular Dividend Payment Date**" means, with respect to any share of Preferred Stock, each March 31, June 30, September 30 and December 31 of each year, beginning on the first such date occurring after the Initial Issue Date (or beginning on such other date specified in the Certificate evidencing such share).

"**Regular Dividend Period**" means each period from, and including, a Regular Dividend Payment Date (or, in the case of the first Regular Dividend Period, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

"**Regular Dividend Rate**" means, with respect to each period set forth below, the interest rate set forth opposite such period:

Initial Issue Date until [●], 2025[1]	13.0% per annum
[●], 2025[2] until [●], 2027[3]	14.5% per annum
From and after [●], 2027[4]	15.5% per annum (which shall increase by one additional percentage point on each anniversary of the Initial Issue Date from and after the fourth anniversary of the Initial Issue Date)

provided, however, that to the extent and during the period with respect to which such rate has been adjusted as provided in **Section 8(b)**, means such adjusted interest rate.

"**Regular Dividend Record Date**" has the following meaning: (a) March 15th, in the case of a Regular Dividend Payment Date occurring on March 31st; (b) June 15th, in the case of a Regular Dividend Payment Date occurring on June 30th; (c) September 15th, in the case of a Regular Dividend Payment Date occurring on September 30th; and (d) December 15th, in the case of a Regular Dividend Payment Date occurring on December 31st.

"**Regular Dividends**" has the meaning set forth in **Section 5(a)(i)**.

"**Repurchase Upon Change of Control**" means the repurchase of any Preferred Stock by the Company pursuant to **Section 8**.

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[1] First anniversary of Initial Issue Date

[2] First day after first anniversary of Initial Issue Date

[3] End of third year after Initial Issue Date

[4] Next day after end of third year after Initial Issue Date

"**Restricted Stock Legend**" means a legend substantially in the form set forth in **Exhibit B**.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Security**" means any Preferred Stock.

"**Senior Credit Agreement**" means the Credit Agreement (as in effect on the Initial Issue Date) contemplated by the Commitment Letter, dated as of March 26, 2024, among The One Group, LLC, Deutsche Bank Securities Inc., Deutsche Bank AG New York Branch, HPS Investment Partners, LLC and HG Vora Capital Management, LLC, without giving effect to any amendment, waiver or consent thereto after the execution and delivery of the Investment Agreement that is materially adverse to the Holders.

"**Share Agent**" means the Transfer Agent or any Registrar or Paying Agent.

"**Subsidiary**" means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (b) any partnership or limited liability company where (x) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (y) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Transfer Agent**" means Continental Stock Transfer & Trust Company or its successor.

"**Transfer-Restricted Security**" means any Security that constitutes a "restricted security" (as defined in Rule 144); *provided*, *however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(a) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(b) such Security is sold or otherwise transferred to a Person (other than the

Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a "restricted security" (as defined in Rule 144); and

(c) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Company has received such certificates or other documentation or evidence as the Company may reasonably require to determine that the Holder, holder or beneficial owner of such Security is not, and has not been during the immediately preceding three (3) months, an Affiliate of the Company.

"**Treasury Rate**" means, with respect to any redemption or repurchase date, the yield determined by the Company in accordance with the following two paragraphs.

The Treasury Rate shall be determined by the Company after 4:15 p.m., New York City time (or after such time as yields on U.S. government securities are posted daily by the Board of Governors of the Federal Reserve System), on the third business day preceding the redemption or repurchase date based upon the yield or yields for the most recent day that appear after such time on such day in the most recent statistical release published by the Board of Governors of the Federal Reserve System designated as "Selected Interest Rates (Daily) - H.15" (or any successor designation or publication) ("**H.15**") under the caption "U.S. government securities–Treasury constant maturities–Nominal" (or any successor caption or heading). In determining the Treasury Rate, the Company shall select, as applicable: (1) the yield for the Treasury constant maturity on H.15 exactly equal to the period from the redemption or repurchase date to the First Call Date or the Change of Control Repurchase Calculation Date, as applicable (the "**Remaining Life**"); or (2) if there is no such Treasury constant maturity on H.15 exactly equal to the Remaining Life, the two yields – one yield corresponding to the Treasury constant maturity on H.15 immediately shorter than and one yield corresponding to the Treasury constant maturity on H.15 immediately longer than the Remaining Life – and shall interpolate to the First Call Date or the Change of Control Repurchase Calculation Date, as applicable, on a straight-line basis (using the actual number of days) using such yields and rounding the result to three decimal places; or (3) if there is no such Treasury constant maturity on H.15 shorter than or longer than the Remaining Life, the yield for the single Treasury constant maturity on H.15 closest to the Remaining Life. For purposes of this paragraph, the applicable Treasury constant maturity or maturities on H.15 shall be deemed to have a maturity date equal to the relevant number of months or years, as applicable, of such Treasury constant maturity from the redemption or repurchase date.

If on the third business day preceding the redemption or repurchase date, H.15 or any successor designation or publication is no longer published, the Company shall calculate the Treasury Rate based on the rate per annum equal to the semi-annual equivalent yield to maturity at 11:00 a.m., New York City time, on the second business day preceding such redemption or repurchase date of the United States Treasury security maturing on, or with a maturity that is closest to, the First Call Date or the Change of Control Repurchase Calculation Date, as applicable. If there is no United States Treasury security maturing on the First Call Date or the Change of

Control Repurchase Calculation Date, as applicable, but there are two or more United States Treasury securities with a maturity date equally distant from the First Call Date or the Change of Control Repurchase Calculation Date, as applicable, one with a maturity date preceding the First Call Date or the Change of Control Repurchase Calculation Date, as applicable and one with a maturity date following the First Call Date or the Change of Control Repurchase Calculation Date, as applicable, the Company shall select the United States Treasury security with a maturity date preceding the First Call Date or the Change of Control Repurchase Calculation Date, as applicable. If there are two or more United States Treasury securities maturing on the First Call Date or the Change of Control Repurchase Calculation Date, as applicable, or two or more United States Treasury securities meeting the criteria of the preceding sentence, the Company shall select from among these two or more United States Treasury securities the United States Treasury security that is trading closest to par based upon the average of the bid and asked prices for such United States Treasury securities at 11:00 a.m., New York City time. In determining the Treasury Rate in accordance with the terms of this paragraph, the semi-annual yield to maturity of the applicable United States Treasury security shall be based upon the average of the bid and asked prices (expressed as a percentage of principal amount) at 11:00 a.m., New York City time, of such United States Treasury security, and rounded to three decimal places.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 2. Rules of Construction. For purposes of this Certificate of Designations:

(a) "or" is not exclusive;

(b) "including" means "including without limitation";

(c) "will" expresses a command;

(d) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(f) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(g) "herein," "hereof" and other words of similar import refer to this Certificate of Designations as a whole and not to any particular Section or other subdivision of this Certificate of Designations, unless the context requires otherwise;

(h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and

(i) the exhibits, schedules and other attachments to this Certificate of Designations are deemed to form part of this Certificate of Designations.

Section 3. The Preferred Stock.

(a) *Designation; Par Value*. A series of stock of the Company titled the "Series A Preferred Stock" (the "**Preferred Stock**") is hereby designated and created out of the authorized and unissued shares of Preferred Stock of the Company. The par value of the Preferred Stock is $0.0001 per share.

(b) *Number of Authorized Shares*. The total authorized number of shares of Preferred Stock is one hundred sixty thousand (160,000); *provided*, *however* that, by resolution of the Board of Directors, the total number of authorized shares of Preferred Stock may be increased or reduced to a number that is not less than the number of shares of Preferred Stock then outstanding.

(c) *Form, Dating and Denominations*.

(i) *Form and Date of Certificates Evidencing Preferred Stock*. Each Certificate evidencing any Preferred Stock will (1) be substantially in the form set forth in **Exhibit A** and (2) bear the legends required by **Section 3(g)** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the depositary.

(ii) *Electronic Certificates; Physical Certificates*. The Preferred Stock will be originally issued initially in the form of one or more Electronic Certificates. Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates, upon request by the Holder thereof pursuant to customary procedures, subject to **Section 3(h)**.

(iii) *Electronic Certificates; Interpretation.* For purposes of this Certificate of Designations, (1) each Electronic Certificate will be deemed to include the text of the stock certificate set forth in **Exhibit A**; (2) any legend or other notation that is required to be included on a Certificate will be deemed to be affixed to any Electronic Certificate notwithstanding that such Electronic Certificate may be in a form that does not permit affixing legends thereto; (3) any reference in this Certificate of Designations to the "delivery" of any Electronic Certificate will be deemed to be satisfied upon the registration of the electronic book entry representing such Electronic Certificate in the name of the applicable Holder; (4) upon satisfaction of any applicable requirements of the DGCL, the Certificate of Incorporation and the Bylaws of the Company, and any related requirements of the Transfer Agent, in each case, for the issuance of Preferred Stock in the form of one or more Electronic Certificates, such Electronic Certificates will be deemed to be executed by the Company and countersigned by the Transfer Agent.

(iv) *Appointment of Depositary*. If any Preferred Stock is admitted to the book-

entry clearance and settlement facilities of any electronic depositary, then, notwithstanding anything to the contrary in this Certificate of Designations, each reference in this Certificate of Designations to the delivery of, or payment on, any such Preferred Stock, or the delivery of any related notice or demand, will be deemed to be satisfied to the extent the applicable procedures of such depositary governing such delivery or payment, as applicable, are satisfied.

(v) *No Bearer Certificates; Denominations*. The Preferred Stock will be issued only in registered form and only in whole numbers of shares.

(vi) *Registration Numbers*. Each Certificate evidencing any share of Preferred Stock will bear a unique registration number that is not affixed to any other Certificate evidencing any other then-outstanding shares of Preferred Stock.

(d) *Execution, Countersignature and Delivery*.

(i) *Due Execution by the Company*. At least two (2) duly authorized Officers will sign each Certificate evidencing any Preferred Stock on behalf of the Company by manual, facsimile or electronic signature. The validity of any Preferred Stock will not be affected by the failure of any Officer whose signature is on any Certificate evidencing such Preferred Stock to hold, at the time such Certificate is countersigned by the Transfer Agent, the same or any other office at the Company.

(ii) *Countersignature by Transfer Agent*. No Certificate evidencing any share of Preferred Stock is valid until such Certificate is countersigned by the Transfer Agent. Each Certificate will be deemed to be duly countersigned only when an authorized signatory of the Transfer Agent (or a duly appointed agent thereof) signs (by manual, facsimile or electronic signature) the countersignature block set forth in such Certificate.

(e) *Method of Payment; Delay When Payment Date is Not a Business Day.*

(i) *Method of Payment.*

(1) *Electronic Certificates*. The Company will pay (or cause the Paying Agent to pay) all cash amounts due on any Preferred Stock evidenced by an Electronic Certificate, out of funds legally available therefor, by wire transfer of immediately available funds.

(2) *Physical Certificates*. The Company will pay (or cause the Paying Agent to pay) all cash amounts due on any Preferred Stock evidenced by a Physical Certificate, out of funds legally available therefor, as follows:

(A) if the aggregate Liquidation Preference of the Preferred Stock evidenced by such Physical Certificate is at least five million dollars ($5,000,000.00) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Preferred Stock entitled

to such cash Dividend or amount has delivered to the Paying Agent, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and

(B) in all other cases, by check mailed to the address of such Holder set forth in the Register.

To be timely, such written request must be delivered no later than the Close of Business on the following date: (x) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

(ii) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on any Preferred Stock as provided in this Certificate of Designations is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designations, such payment may be made on the immediately following Business Day and no interest, dividend or other amount will accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a "Business Day."

(f) *Transfer Agent, Registrar and Paying Agent.*

(i) *Generally*. The Company designates its principal U.S. executive offices, and any office of the Transfer Agent in the continental United States, as an office or agency where Preferred Stock may be presented for (1) registration of transfer or for exchange (the "**Registrar**") and (2) payment (the "**Paying Agent**"). At all times when any Preferred Stock is outstanding, the Company will maintain an office in the continental United States constituting the Registrar and Paying Agent.

(ii) *Maintenance of the Register*. The Company will keep, or cause there to be kept, a record (the "**Register**") of the names and addresses of the Holders, the number of shares of Preferred Stock held by each Holder and the transfer, exchange, repurchase and redemption of the Preferred Stock. Absent manifest error, the entries in the Register will be conclusive and the Company and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly. The Company will promptly provide a copy of the Register to any Holder upon its request.

(iii) *Subsequent Appointments*. By notice to each Holder, the Company may, at any time, appoint any Person (including any Subsidiary of the Company) to act as Registrar or Paying Agent.

(iv) If the Company or any of its Subsidiaries acts as Paying Agent, then (1) it will segregate for the benefit of the Holders all money and other property held by it as Paying Agent; and (2) references in this Certificate of Designations to the Paying Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent for payment or delivery to any Holders or with respect to the Preferred Stock, will be deemed to refer to cash or other property so segregated, or to the segregation of such cash or other property, respectively.

(g) *Legends*.

(i) *Restricted Stock Legend*.

(1) Each Certificate evidencing any share of Preferred Stock that is a Transfer-Restricted Security will bear the Restricted Stock Legend.

(2) If any share of Preferred Stock is issued in exchange for or in substitution of any other share(s) of Preferred Stock (such other share(s) being referred to as the "old share(s)" for purposes of this **Section 3(g)(i)(2)**), including pursuant to **Section 3(i)** or **3(k)**, then the Certificate evidencing such share will bear the Restricted Stock Legend if the Certificate evidencing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution; *provided*, *however*, that the Certificate evidencing such share need not bear the Restricted Stock Legend if such share does not constitute a Transfer-Restricted Security immediately after such exchange or substitution.

(ii) *Other Legends.* The Certificate evidencing any Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designations, as may be required by applicable law, by the rules of any applicable depositary for the Preferred Stock or by any securities exchange or automated quotation system on which such Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Company to be appropriate.

(iii) *Acknowledgement and Agreement by the Holders*. A Holder's acceptance of any Preferred Stock evidencing by a Certificate bearing any legend required by this **Section 3(g)** will constitute such Holder's acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.

(h) *Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions*.

(i) *Provisions Applicable to All Transfers and Exchanges.*

(1) *Generally*. Subject to this **Section 3(h)**, Preferred Stock evidenced by any Certificate may be transferred or exchanged from time to time and the Company will cause the Registrar to record each such transfer or exchange in the Register.

(2) *No Services Charge; Transfer Taxes*. The Company and the Share Agents will not impose any service charge on any Holder for any transfer or exchange of any Preferred Stock, but the Company, the Transfer Agent and the Registrar may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer or exchange of Preferred Stock, other than exchanges pursuant to **Section 3(i)** or **Section 3(q)** not involving any transfer (*provided*, that any such taxes or charges incurred in connection with the original issuance of the Preferred Stock shall be paid and borne by the Company).

(3) *No Transfers or Exchanges of Fractional Shares*. Notwithstanding anything to the contrary in this Certificate of Designations, all transfers or exchanges of Preferred Stock must be in an amount representing a whole number of shares of Preferred Stock, and no fractional share of Preferred Stock may be transferred or exchanged.

(4) *Legends*. Each Certificate evidencing any share of Preferred Stock that is issued upon transfer of, or in exchange for, another share of Preferred Stock will bear each legend, if any, required by **Section 3(g)**.

(5) *Settlement of Transfers and Exchanges*. Upon satisfaction of the requirements of this Certificate of Designations to effect a transfer or exchange of any Preferred Stock, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(6) *Exchanges to Remove Transfer Restrictions*. For the avoidance of doubt, and subject to the terms of this Certificate of Designations, as used in this **Section 3(h)**, an "exchange" of a Certificate includes an exchange effected for the sole purpose of removing any Restricted Stock Legend affixed to such Certificate.

(ii) *Transfers and Exchanges of Preferred Stock.*

(1) Subject to this **Section 3(h)**, a Holder of any Preferred Stock evidenced by a Certificate may (x) transfer any whole number of shares of such Preferred Stock to one or more other Person(s); and (y) exchange any whole number of shares of such Preferred Stock for an equal number of shares of Preferred Stock evidenced by one or more other Certificates; *provided*, *however*, that, to effect any such transfer or exchange, such Holder must, if such Certificate is a Physical Certificate, surrender such Physical Certificate to the office of the Transfer Agent or the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Transfer Agent or the Registrar.

(2) Upon the satisfaction of the requirements of this Certificate of Designations to effect a transfer or exchange of any whole number of shares of a Holder's Preferred Stock evidenced by a Certificate (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(h)(ii)(2)**):

(A) such old Certificate will be promptly cancelled pursuant to **Section 3(m)**;

(B) if fewer than all of the shares of Preferred Stock evidenced by such old Certificate are to be so transferred or exchanged, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Preferred Stock and, in the aggregate, evidence a total number of shares of Preferred Stock equal to the number of shares of Preferred Stock evidenced by such old Certificate not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**;

(C) in the case of a transfer to a transferee, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Preferred Stock and, in the aggregate, evidence a total number of shares of Preferred Stock equal to the number of shares of Preferred Stock to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 3(g)**; and

(D) in the case of an exchange, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Preferred Stock and, in the aggregate, evidence a total number of shares of Preferred Stock equal to the number of shares of Preferred Stock to be so exchanged; (y) are registered in the name of the Person to whom such old Certificate was registered; and (z) bear each legend, if any, required by **Section 3(g)**.

(iii) *Transfers of Shares Subject to Redemption or Repurchase*. Notwithstanding anything to the contrary in this Certificate of Designations, the Company, the Transfer Agent and the Registrar will not be required to register the transfer of or exchange any share of Preferred Stock that has been called for Optional Redemption or subject to Mandatory Redemption or a Repurchase Upon Change of Control.

(i) *Exchange and Cancellation of Preferred Stock to Be Repurchased Pursuant to a Repurchase Upon Change of Control or a Redemption*.

(i) *Partial Repurchases of Physical Certificates Pursuant to a Repurchase Upon Change of Control or a Redemption*. If fewer than all of the shares of Preferred Stock evidenced by a Physical Certificate (such Physical Certificate being referred to as the "old Physical Certificate" for purposes of this **Section 3(i)(i)**) are to be repurchased pursuant to a Repurchase Upon Change of Control, a Mandatory Redemption or an Optional

Redemption, then, as soon as reasonably practicable after such Physical Certificate is surrendered for such repurchase, as applicable, the Company will cause such Physical Certificate to be exchanged, pursuant and subject to **Section 3(h)**, for (1) one or more Physical Certificates that each evidence a whole number of shares of Preferred Stock and, in the aggregate, evidence a total number of shares of Preferred Stock equal to the number of shares of Preferred Stock evidenced by such old Physical Certificate that are not to be so repurchased and deliver such Physical Certificate(s) to such Holder; and (2) a Physical Certificate evidencing a whole number of shares of Preferred Stock equal to the number of shares of Preferred Stock evidenced by such old Physical Certificate that are to be so repurchased which Physical Certificate will be repurchased pursuant to the terms of this Certificate of Designations; *provided*, *however*, that the Physical Certificate referred to in this **clause (2)** need not be issued at any time after which such shares subject to such repurchase are deemed to cease to be outstanding pursuant to **Section 3(o)**.

(ii) *Cancellation of Preferred Stock that Is Repurchased Pursuant to a Repurchase Upon Change of Control or a Redemption*. If shares of Preferred Stock evidenced by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to **Section 3(i)(i)**) (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(i)(ii)**) are to be repurchased pursuant to a Repurchase Upon Change of Control, a Mandatory Redemption or an Optional Redemption, then, promptly after the later of the time such Preferred Stock is deemed to cease to be outstanding pursuant to **Section 3(o)** and the time such old Certificate is surrendered for such repurchase, (1) such old Certificate will be cancelled pursuant to **Section 3(m)**; and (2) in the case of a partial repurchase, the Company will issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Preferred Stock and, in the aggregate, evidence a total number of shares of Preferred Stock equal to the number of shares of Preferred Stock evidenced by such old Certificate that are not to be so repurchased; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**.

(j) *Status of Retired or Treasury Shares* . Upon any share of Preferred Stock ceasing to be outstanding, such share will be deemed, automatically and without any further action of the Board of Directors, to be retired and to resume the status of an authorized and unissued share of Preferred Stock of the Company, and such share cannot thereafter be reissued as Preferred Stock.

(k) *Replacement Certificates*. If a Holder of any Preferred Stock claims that the Certificate(s) evidencing such Preferred Stock have been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(c)**, a replacement Certificate evidencing such Preferred Stock upon surrender to the Company or the Transfer Agent of such mutilated Certificate, or upon delivery to the Company or the Transfer Agent of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Company. In the case of a lost, destroyed or wrongfully taken Certificate evidencing Preferred Stock, the Company and the Transfer Agent may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Transfer Agent to protect the

Company and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced. Every replacement Certificate evidencing Preferred Stock issued pursuant to this **Section 3(k)** will, upon such replacement, be deemed to be evidence of outstanding Preferred Stock, entitled to all of the benefits of this Certificate of Designations equally and ratably with all other Preferred Stock then outstanding.

(l) *Registered Holders*. Only the Holder of any share of Preferred Stock will have rights under this Certificate of Designations as the owner of such share of Preferred Stock.

(m) *Cancellation*. The Company may at any time deliver Certificates evidencing Preferred Stock, if any, to the Transfer Agent for cancellation. The Registrar and the Paying Agent will forward to the Transfer Agent each share of Preferred Stock duly surrendered to them for transfer, exchange or payment. The Company will cause the Transfer Agent to promptly cancel all Certificates evidencing shares of Preferred Stock so surrendered to it in accordance with its customary procedures.

(n) *Shares Held by the Company or its Subsidiaries*. Without limiting the generality of **Section 3(j)** and **Section 3(o)**, in determining whether the Holders of the required number of outstanding shares of Preferred Stock have concurred in any direction, waiver or consent, shares of Preferred Stock owned by the Company or any of its Subsidiaries will be deemed not to be outstanding.

(o) *Outstanding Shares*.

(i) *Generally*. The shares of Preferred Stock that are outstanding at any time will be deemed to be those shares indicated as outstanding in the Register (absent manifest error), excluding those shares of Preferred Stock that have theretofore been (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with **Section 3(m)**; (2) paid in full upon their repurchase pursuant to a Repurchase Upon Change of Control, a Mandatory Redemption or an Optional Redemption in accordance with this Certificate of Designations; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (ii)**, **(iii)** or **(iv)** of this **Section 3(o)**.

(ii) *Replaced Shares*. If any Certificate evidencing any share of Preferred Stock is replaced pursuant to **Section 3(k)**, then such share will cease to be outstanding at the time of such replacement, unless the Transfer Agent and the Company receive proof reasonably satisfactory to them that such share is held by a "*bona fide* purchaser" under applicable law.

(iii) *Shares to Be Repurchased Pursuant to a Redemption*. If, on the Mandatory Redemption Date or Optional Redemption Date, as applicable, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Mandatory

Redemption Price or Optional Redemption Price, as applicable, due on such date, then (unless there occurs a default in the payment of the Mandatory Redemption Price or Optional Redemption Price, as applicable) (1) the Preferred Stock to be redeemed on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Preferred Stock, as such, will terminate with respect to such Preferred Stock, other than the right to receive the Mandatory Redemption Price or Optional Redemption Price, as applicable, as provided in **Section 7** (and Dividends as provided in **Section 5(d)**).

(iv) *Shares to Be Repurchased Pursuant to a Repurchase Upon Change of Control* . If, on a Change of Control Repurchase Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Change of Control Repurchase Price due on such date, then (unless there occurs a default in the payment of the Change of Control Repurchase Price) (1) the Preferred Stock to be repurchased on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Preferred Stock, as such, will terminate with respect to such Preferred Stock, other than the right to receive the Change of Control Repurchase Price as provided in **Section 8** (and Dividends as provided in **Section 5(d)**).

(p) *Repurchases by the Company and its Subsidiaries*. Without limiting the generality of **Section 3(m)** and the next sentence and any rights of Holders pursuant to **Section 9**, the Company and its Subsidiaries may, from time to time, repurchase Preferred Stock in open market purchases or in negotiated transactions without delivering prior notice to Holders. The Company will promptly deliver to the Transfer Agent for cancellation all Preferred Stock that the Company or any of its Subsidiaries have purchased or otherwise acquired.

(q) *Notations and Exchanges*. Without limiting any rights of Holders pursuant to **Section 9**, if any amendment, supplement or waiver to the Certificate of Incorporation (including this Certificate of Designations) changes the terms of any Preferred Stock, then the Company may, in its discretion, require the Holder of the Certificate evidencing such Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Company on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case, in accordance with **Section 3(c)**, a new Certificate evidencing such Preferred Stock that reflects the changed terms. The failure to make any appropriate notation or issue a new Certificate evidencing any Preferred Stock pursuant to this **Section 3(q)** will not impair or affect the validity of such amendment, supplement or waiver.

Section 4. Ranking. The Preferred Stock will rank (a) senior to (i) Dividend Junior Securities with respect to the payment of dividends; and (ii) Liquidation Junior Securities with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up; (b) equally with (i) Dividend Parity Securities with respect to the payment of dividends; and (ii) Liquidation Parity Securities with respect to the distribution of assets upon the Company's

liquidation, dissolution or winding up; and (c) junior to (i) Dividend Senior Securities with respect to the payment of dividends; and (ii) Liquidation Senior Securities with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up.

Section 5. Dividends.

(a) *Regular Dividends*.

(i) *Accumulation and Payment of Regular Dividends*. The Preferred Stock will accumulate cumulative dividends at a rate per annum equal to the Regular Dividend Rate on the then Accumulated Liquidation Preference in respect of the Preferred Stock, whether or not declared (and including, for the avoidance of doubt, any previously accrued and unpaid dividends in respect of the Preferred Stock which have been added to the Liquidation Preference pursuant to **Section 5(b)(i)** on a compounding basis (the "**Compounded Dividends**") thereof (calculated in accordance with **Section 5(a)(ii)**), regardless of whether or not declared or funds are legally available for their payment (such dividends that accumulate on the Preferred Stock pursuant to this sentence, "**Regular Dividends**"). Subject to the other provisions of this **Section 5** (including, for the avoidance of doubt, **Section 5(b)(i)**), such Regular Dividends will be payable quarterly in arrears on each Regular Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Regular Dividend Record Date. Regular Dividends on the Preferred Stock will accumulate daily from, and including, the last date on which Regular Dividends have been paid (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date. In the event that:

(1) the Company fails to make (A) any payment when due with respect to the shares of Preferred Stock required hereunder and such failure to pay continues for a period of five (5) days from the date such payment was due, (B) any payment of the Change of Control Repurchase Price in full within five (5) days from the date such payment is due in accordance with **Section 8** or (C) any payment of the Mandatory Redemption Price within five (5) days from the date such payment is due in accordance with **Section 7** in respect of some or all of the shares of Preferred Stock to be repurchased pursuant to the Repurchase Upon Change of Control or the Mandatory Redemption, as applicable,

(2) a Default or Event of Default under (and as defined in) the Senior Credit Agreement or any indebtedness incurred to refinance such Senior Credit Agreement has occurred and is continuing, or

(3) the shares of Common Stock cease to be listed for trading on any United States national securities exchange,

Dividends shall be paid at the Default Dividend Rate payable quarterly in arrears, out of funds legally available, on each Dividend Payment Date, for the period from

and including the date upon which the event in (1), (2) or (3) occurs through, in case of (1)(A) above, the date the Company pays such unpaid amounts in full, in case of (1)(B) and (1)(C) above, the date but not including the latest of the day upon which the Company pays the Change of Control Repurchase Price or the Mandatory Redemption Price in full in accordance with **Section 7** and **Section 8**, as applicable), in case of (2) above, the date such Default or Event of Default under the Senior Credit Agreement ceases to continue or is remediated, and in case of (3) above, the date the shares of Common Stock are listed for trading on any United States national securities exchange.

(ii) *Computation of Accumulated Regular Dividends*. Accumulated Regular Dividends will be computed on the basis of a 360-day year comprised of twelve 30-day months. Regular Dividends on each share of Preferred Stock will accrue on the then Accumulated Liquidation Preference (whether or not declared) of such share as of immediately before the Close of Business on the preceding Regular Dividend Payment Date (or, if there is no preceding Regular Dividend Payment Date, on the Initial Issue Date of such share).

(b) *Calculation of Regular Dividends*.

(i) *Generally*. Dividends shall not be paid in cash, and, instead the dollar amount (expressed as an amount per share of Preferred Stock) of each Regular Dividend on the Preferred Stock (whether or not declared) that has accumulated on the Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, a Regular Dividend Payment Date, will be added, effective immediately before the Close of Business on the related Regular Dividend Payment Date, to the then Accumulated Liquidation Preference of each share of Preferred Stock outstanding as of such time on a compounding basis. Such addition (if any) will occur automatically, without the need for any action on the part of the Company or any other Person.

(ii) *Construction*. Any Regular Dividends added to the Accumulated Liquidation Preference of any share of Preferred Stock pursuant to **Section 5(b)(i)** will be deemed to be "declared" and "paid" on such share of Preferred Stock for all purposes of this Certificate of Designations.

(c) *[Reserved]*.

(d) *Treatment of Dividends Upon Redemption or Repurchase Upon Change of Control.* If the Mandatory Redemption Date, Optional Redemption Date or Change of Control Repurchase Date (as applicable) of any share of Preferred Stock is after a Record Date for a declared Dividend on the Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Mandatory Redemption, Optional Redemption or Repurchase Upon Change of Control (as applicable) to receive, on or, at the Company's election, before such Dividend Payment Date, such Dividend on such share. In addition, if the Mandatory Redemption Date, Optional Redemption Date or Change of Control Repurchase Date (as applicable) of any share of Preferred Stock is after

a Regular Dividend Payment Date, then the Holder of such share on such applicable date will be entitled, notwithstanding the related Mandatory Redemption, Optional Redemption or Repurchase Upon Change of Control, as applicable, to receive, on such applicable date the amount of the Regular Dividend accrued since the preceding Regular Dividend Payment Date up through such applicable date (including, without duplication, any Regular Dividend not yet paid or compounded).

Section 6. Rights Upon Liquidation, Dissolution or Winding Up.

(a) *Generally*. If the Company or any Material Subsidiary liquidates, dissolves or winds up, whether voluntarily or involuntarily (any such event, a "**Liquidation Event**"), then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Securities, each share of Preferred Stock will entitle the Holder thereof to receive payment for the amount equal to the Liquidation Preference, plus any accrued and unpaid dividends in respect of the Preferred Stock, whether or not declared (and including, for the avoidance of doubt, any Compounded Dividends) out of the Company's assets or funds legally available for distribution to the Company's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Liquidation Junior Securities .

Upon payment of such amount in full on the outstanding Preferred Stock, Holders of the Preferred Stock will have no rights to the Company's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Liquidation Parity Securities, if any, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Securities, such assets or funds will be distributed ratably on the outstanding shares of Preferred Stock and Liquidation Parity Securities in proportion to the full respective distributions to which such shares would otherwise be entitled.

(b) *Certain Business Combination Transactions Deemed Not to Be a Liquidation*. For purposes of **Section 6(a)**, the Company's consolidation or combination with, or merger with or into, or the sale, lease or other transfer of all or substantially all of the Company's assets (other than a sale, lease or other transfer in connection with the Company's liquidation, dissolution or winding up) to, another Person will not, in itself, constitute the Company's liquidation, dissolution or winding up, even if, in connection therewith, the Preferred Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing.

Section 7. Redemption By The Company.

(a) *Mandatory Redemption Upon the Exercise of Majority Holders' Option* . Subject to the terms of this **Section 7(a)**, upon exercise by Holders constituting at least a majority of the outstanding shares of the Preferred Stock (the "**Majority Holders**") (in their sole and absolute discretion) of their option under **Section 7(a)(i)** when permitted by **Section 7(a)(i)**, the Company shall repurchase all shares of the Preferred Stock outstanding on the Mandatory Redemption Date (as defined below), out of funds legally available therefor, for a cash purchase price equal to the

Mandatory Redemption Price (the "**Mandatory Redemption**").

(i) *Mandatory Redemption Date.* The redemption date for the Mandatory Redemption shall not occur until and unless the Majority Holders exercise their option (in their sole and absolute discretion) when permitted by this **Section 7(a)(i)** by providing written notice to the Company. Such a written notice may delivered to the Company only: (x) on any Business Day that is 91 or more days after the maturity of the term loan in the Senior Credit Agreement as in effect on the Initial Issue Date or (y) on any Business Day that is on or after the date that any Material Indebtedness is accelerated pursuant to the terms thereof (the "**Mandatory Redemption Date**").

(ii) *Mandatory Redemption Price.* The Mandatory Redemption Price for each share of Preferred Stock to be repurchased pursuant to the Mandatory Redemption is an amount in cash equal to the Liquidation Preference, plus any accrued and unpaid dividends in respect of the Preferred Stock, whether or not declared (and including, for the avoidance of doubt, any Compounded Dividends).

(iii) *Payment of the Mandatory Redemption Price.* The Company will cause the Mandatory Redemption Price for each share of Preferred Stock subject to Mandatory Redemption to be paid to the Holder thereof on or before the Mandatory Redemption Date.

(b) *Optional Redemption*. Subject to the terms of this **Section 7(b)**, the Company has the right, at its election, to repurchase, by irrevocable, written notice to each Holder, all or any portion (but in no less than $5,000,000 increments based on the Accumulated Liquidation Preference as of the date of the Redemption Notice (or such lesser amount to the extent the Redemption Notice relates to all of the outstanding shares of the Preferred Stock)) of the then-outstanding shares of Preferred Stock, at any time, on an Optional Redemption Date, out of funds legally available therefor, for a cash purchase price equal to the Optional Redemption Price (each such redemption, an "**Optional Redemption**").

(i) *Optional Redemption Date*. The Optional Redemption Date for any Optional Redemption will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than ten (10), Business Days after the Redemption Notice Date for such Optional Redemption.

(ii) *Optional Redemption Price*. The Optional Redemption Price for any share of Preferred Stock to be repurchased pursuant to an Optional Redemption is an amount in cash equal to:

(1) if the Optional Redemption Date is on or after the First Call Date, (x) the Liquidation Preference (including, for the avoidance of doubt, any previously accrued and unpaid dividends in respect of the Preferred Stock which have been added to the Liquidation Preference pursuant to **Section 5(b)(i)**, plus any accrued and unpaid dividends in respect of the Preferred Stock to the extent not already added to the Liquidation Preference, whether or not declared) of such share at the Close of Business on the applicable Optional Redemption Date multiplied by

(y) the Applicable Additional Amount.

For purposes of this **Section 7(b)(ii)(1)**, "**Applicable Additional Amount**" means (x) for an Optional Redemption Date occurring on or after the First Call Date and prior to the fourth anniversary of the Initial Issue Date, an amount equal to 102.25% or (y) for an Optional Redemption Date occurring on or after the fourth anniversary of the Initial Issue Date, an amount equal to 100%.

(2) if the Optional Redemption Date is prior to the First Call Date, (x) the Liquidation Preference (including, for the avoidance of doubt, any previously accrued and unpaid dividends in respect of the Preferred Stock which have been added to the Liquidation Preference pursuant to **Section 5(b)(i)**, plus any accrued and unpaid dividends in respect of the Preferred Stock to the extent not already added to the Liquidation Preference, whether or not declared) of such share at the Close of Business on the applicable Optional Redemption Date (the "**Optional Redemption Date Liquidation Preference**") plus (y) the Make-Whole Premium.

For purposes of this **Section 7(b)(ii)(2)**, "**Make-Whole Premium**" means an amount equal to the excess, if any, of (a) the present value (computed using a discount rate equal to the Treasury Rate as of such Optional Redemption Date plus 50 basis points, discounted quarterly) of the Optional Redemption Price of such Preferred Stock at the Close of Business on the First Call Date (calculated in accordance with **Section 7(b)(ii)(1)**) over (b) the Optional Redemption Date Liquidation Preference. For purposes of calculating the Make-Whole Premium, Dividends will be deemed to accrue and compound at the Regular Dividend Rate in effect on the Redemption Notice Date for such Optional Redemption.

(iii) *Payment of the Optional Redemption Price*. The Company will cause the Optional Redemption Price for each share of Preferred Stock subject to Optional Redemption to be paid to the Holder thereof on or before the applicable Optional Redemption Date.

(iv) *Partial Optional Redemption.* In case of Optional Redemption of less than all then-outstanding shares of Preferred Stock, the shares to be redeemed by the Company shall be allocated among all Holders pro rata on the basis of the aggregate Accumulated Liquidation Preference of the shares of Preferred Stock owned by each such Holder.

(c) *Redemption Notice*. To call any share of Preferred Stock for Mandatory Redemption or Optional Redemption, the Company must send to the Holder of the Preferred Stock a notice of such redemption (a " **Redemption Notice**"), which Redemption Notice must state:

(i) that such share has been called for Optional Redemption or is subject to Mandatory Redemption;

(ii) the Optional Redemption Date or the Mandatory Redemption Date, as applicable;

(iii) in case of an Optional Redemption, the aggregate number of shares subject

to Optional Redemption;

(iv) in case of an Optional Redemption, the number of such Holder's shares subject to Optional Redemption;

(v) the Optional Redemption Price or Mandatory Redemption Price, as applicable, per share of Preferred Stock, including reasonable detail of the calculation thereof;

(vi) if the Optional Redemption Date or Mandatory Redemption Date, as applicable, is after a Record Date for a declared Dividend on the Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**; and

(vii) the name and address of the Transfer Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent.

Section 8. Repurchase Upon Change of Control; Funds Legally Available For Payment.

(a) *Repurchase Upon Change of Control*. Subject to the terms of this **Section 8**, if a Change of Control occurs, then the Company shall repurchase all shares of Preferred Stock outstanding on the Change of Control Repurchase Date, out of funds legally available therefor, for a cash purchase price equal to the Change of Control Repurchase Price.

(b) *Funds Legally Available for Payment of Change of Control Repurchase Price or Redemption Price; Covenant Not to Take Certain Actions*. If the Company does not have sufficient funds legally available to pay the Change of Control Repurchase Price, the Mandatory Redemption Price or the Optional Redemption Price, as applicable, with respect to all shares of Preferred Stock that are to be repurchased pursuant to a Repurchase Upon Change of Control, Mandatory Redemption or Optional Redemption, as applicable, then the Company shall (1) pay the maximum amount of such Change of Control Repurchase Price, Mandatory Redemption Price or Optional Redemption Price that can be paid out of funds legally available for payment, which payment will be made pro rata to each Holder based on the total number of shares of Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase Upon Change of Control, Mandatory Redemption or Optional Redemption; and (2) purchase any shares of Preferred Stock not purchased because of the foregoing limitations at the applicable Change of Control Repurchase Price, Mandatory Redemption Price or Optional Redemption Price as soon as practicable after the Company is able to make such purchase out of assets legally available for the purchase of such shares of Preferred Stock. For the avoidance of doubt, payment of any such Change of Control Repurchase Price or the Mandatory Redemption Price shall be subject to (x) prior or concurrent repayment of the Obligations (as defined in the Senior Credit Agreement) of the Company and its Subsidiaries under the Senior Credit Agreement and indebtedness of the Company and its Subsidiaries in respect of any Permitted Alternative Incremental Facilities Debt

(as defined in the Senior Credit Agreement) and (y) prior or concurrent repayment of any other indebtedness of the Company and its Subsidiaries if required under the terms thereof. The inability of the Company (or its successor) to make a purchase payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. Notwithstanding the foregoing, in the event a Change of Control occurs at a time when the Company is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Preferred Stock subject to the Repurchase Upon Change of Control, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under this **Section 8**. The Company will not voluntarily take any action, or voluntarily engage in any transaction, that would result in a Change of Control unless the Company in good faith believes that it will have sufficient funds legally available to fully pay the maximum aggregate Change of Control Repurchase Price that would be payable in respect of such Change of Control on all shares of Preferred Stock then outstanding.

(c) *Change of Control Repurchase Date*. The Change of Control Repurchase Date for any Change of Control will be a Business Day of the Company's choosing that is no later than the anticipated effective date of such Change of Control (subject to extension by the Company in the event of a change of the anticipated effective date of such Change of Control).

(d) *Change of Control Repurchase Price*. The Change of Control Repurchase Price for any share of Preferred Stock to be repurchased upon a Repurchase Upon Change of Control following a Change of Control is an amount in cash equal to:

(i) the Liquidation Preference (including, for the avoidance of doubt, any Compounded Dividends, plus any accrued and unpaid dividends in respect of the Preferred Stock to the extent not already added to the Liquidation Preference, whether or not declared) of such share at the Close of Business on the Change of Control Repurchase Date for such Change of Control (the "**Change of Control Repurchase Date Liquidation Preference**"); *plus*

(ii) if the Change of Control Repurchase Date occurs prior to the fourth anniversary of the Initial Issue Date (the "**Change of Control Repurchase Calculation Date**"), an amount equal to the excess, if any, of (a) the present value (computed using a discount rate equal to the Treasury Rate as of such Change of Control Repurchase Date plus 50 basis points, discounted quarterly) of the Optional Redemption Price of such Preferred Stock at the Close of Business on the Change of Control Repurchase Calculation Date over (b) the Change of Control Repurchase Date Liquidation Preference. For purposes of calculating the amount pursuant to this **Section 8(d)(ii)**, Dividends will be deemed to accrue at the Regular Dividend Rate in effect on the date of the Final Change of Control Notice for such Repurchase Upon Change of Control and it will be assumed that Dividends

are compounded quarterly and added to the Accumulated Liquidation Preference.

(e) *Initial Change of Control Notice*. On or before the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Change of Control (or, if later, promptly after the Company discovers that a Change of Control may occur), a written notice shall be sent by or on behalf of the Company to the Holders as they appear in the records of the Company, which notice shall contain the date on which the Change of Control is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Change of Control was filed) (the "**Initial Change of Control Notice**").

(f) *Final Change of Control Notice*. If a Change of Control occurs, on or before the fifth (5th) Business Day prior to the anticipated effective date of a Change of Control, the Company will send to each Holder a notice of such Change of Control (a "**Final Change of Control Notice**"). To the extent not specific in the Initial Change of Control Notice, such Final Change of Control Notice must state:

(i) briefly, the events causing such Change of Control;

(ii) the anticipated effective date of such Change of Control;

(iii) the Change of Control Repurchase Date for such Change of Control;

(iv) the Change of Control Repurchase Price per share of Preferred Stock, including reasonable detail of the calculation thereof;

(v) if the Change of Control Repurchase Date is after a Record Date for a declared Dividend on the Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**; and

(vi) the name and address of the Transfer Agent.

(g) *Third Party May Make Repurchase Upon Change of Control In Lieu of Company*. Notwithstanding anything to the contrary in this **Section 8**, the Company will be deemed to satisfy its obligations under this **Section 8** if one or more third parties conduct any Repurchase Upon Change of Control and related repurchase Preferred Stock otherwise required by this **Section 8** in a manner that would have satisfied the requirements of this **Section 8** if conducted directly by the Company.

(h) *Payment of the Change of Control Repurchase Price*. Subject to **Section 8(b)**, the Company will cause the Change of Control Repurchase Price for each share of Preferred Stock to be repurchased pursuant to a Repurchase Upon Change of Control to be paid to the Holder thereof on or before the applicable Change of Control Repurchase Date (or, if later in the case such share is evidenced by a Physical Certificate, the date the Physical Certificate evidencing such share is delivered to the Paying Agent).

(i) *Change of Control Agreements*. The Company shall not enter into any agreement for a transaction constituting a Change of Control unless (i) such agreement provides for, or does not interfere with or prevent (as applicable), the Repurchase Upon Change of Control in a manner that is consistent with, and gives effect to, this **Section 8** and (ii) the acquiring or surviving Person in such Change of Control represents and covenants, in form and substance reasonably satisfactory to the Board of Directors acting in good faith, that at the closing of such Change of Control that such Person shall have sufficient funds (which may include, without limitation, cash and cash equivalents on the Company's balance sheet, the proceeds of any contemplated debt or equity financing (subject to applicable terms and conditions thereof), available lines of credit or uncalled capital commitments) to consummate such Change of Control and the payment the Change of Control Repurchase Price in respect of shares of Preferred Stock pursuant to this **Section 8**.

Section 9. Voting Rights. The Preferred Stock will have no voting rights except as set forth in this **Section 9** or as otherwise provided in the Certificate of Incorporation or required by the DGCL.

(a) *Voting and Consent Rights with Respect to Specified Matters*.

(i) *Generally*. Subject to the other provisions of this **Section 9(a)**, each following event will require, and cannot be effected without, the affirmative vote or consent of the Majority Holders:

(1) any amendment, modification or repeal of any provision of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws whether by merger or otherwise that adversely affects the Dividend Rights or Liquidation Rights (other than an amendment, modification or repeal permitted by **Section 9(a)(ii)**);

(2) any issuances by the Company (including refinancings or exchanges) of (i) shares of, or other securities convertible into, Dividend Parity Securities, Liquidation Parity Securities, Dividend Senior Securities or Liquidation Senior Securities or (ii) Dividend Junior Securities or Liquidation Junior Securities to the extent such Dividend Junior Securities or Liquidation Junior Securities bear liquidity rights adversely affecting the Dividend Rights or Liquidation Rights;

(3) any issuances by any Subsidiary of equity interests or other securities convertible into equity interests of a Subsidiary for the purpose of a capital-raising transaction designed to effectuate a structurally senior equity security to the Preferred Stock; provided that, so long as no Mandatory Redemption Failure Event shall have occurred and be continuing, any Subsidiary may, without the affirmative vote or consent of the Majority Holders, (x) issue equity interests or other securities convertible into equity interests of a Subsidiary to the Company or any Wholly Owned Subsidiary of the Company or (y) issue equity interests or other securities convertible into equity interests of a Subsidiary for purposes directly related to the development of new restaurant units, including via joint

ventures, strategic alliances, and partnerships, provided that any assets contributed by the Company or its Subsidiaries to such joint ventures, strategic alliances, and partnerships pursuant to this clause (y) shall be assets of such new restaurant unit and not, for the avoidance of doubt, assets relating to existing operations;

(4) the Company or any of its Subsidiaries, directly or indirectly, creating, incurring, issuing, assuming, guarantying or otherwise becoming liable, contingently or otherwise, with respect to any indebtedness for borrowed money ("**Indebtedness**"); provided that, so long as no Mandatory Redemption Failure Event shall have occurred and be continuing:

(A) prior to an Investor Transfer Event, without the affirmative vote or consent of the Majority Holders, the Company and/or any of its Subsidiaries may incur Indebtedness if (i) such Indebtedness is incurred pursuant to the term loan facility and revolving facility available under the Senior Credit Agreement (as in effect on the Initial Issuance Date and without giving effect to any incremental term loans or other additional facilities) or (ii) in an amount that would result in the Company having, immediately following the incurrence of such Indebtedness and all related transactions, a Net Leverage Ratio (as defined in the Senior Credit Agreement) of 2.75x or less (with amounts outstanding under any revolving loan facility being included as leverage for this purpose); provided, further, however, that the Company and/or any of its Subsidiaries may incur any further Indebtedness to the extent the proceeds from the borrowing are simultaneously used to redeem the Preferred Stock in full in accordance with **Section 7**; and

(B) following an Investor Transfer Event, without the affirmative vote or consent of the Majority Holders, the Company and/or any of its Subsidiaries may incur any Indebtedness permitted by the terms of the Senior Credit Agreement (as in effect on the Initial Issue Date); provided, further, however, that the Company and/or any of its Subsidiaries may incur any further Indebtedness to the extent the proceeds from the borrowing are simultaneously used to redeem the Preferred Stock in full in accordance with **Section 7**;

(5) any dividends or distributions upon, or redemptions, repurchases or other acquisitions of, shares of Capital Stock of the Company (other than the payment of dividends on the Preferred Stock or pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company) ("**Distributions**"); provided that, so long as no Mandatory Redemption Failure Event shall have occurred and be continuing, the Company and/or any of its Subsidiaries may, without the affirmative vote or consent of the Majority Holders: (I) make Distributions that in the aggregate taken together with all other restricted payments made pursuant to this **clause (5)(I)** do not exceed $10,000,000, (II) make Distributions that in the aggregate taken together with all other restricted payments made pursuant to this **clause (5)(II)** do not exceed $5,000,000 so long as

after giving effect to any such Distributions pursuant to this **clause (5)(II)** and any related transactions the Company's total liquidity (defined as aggregate unrestricted cash and undrawn amounts then available for borrowing under the Company's revolving credit facilities) exceeds $60,000,000; (III) make Distributions that in the aggregate taken together with all other restricted payments made pursuant to this **clause (5)(III)** do not exceed $5,000,000 so long as after giving effect to any such Distributions pursuant to this **clause (5)(III)** and any related transactions, the Company has a Net Leverage Ratio of 1.50x or less; and/or (IV) make any Distributions so long as (i) after giving effect to any such Distributions pursuant to this **clause (5)(IV)** and any related transactions, (a) the Company has a Net Leverage Ratio of 1.50x or less and (b) the Company's total liquidity (defined as aggregate unrestricted cash and undrawn amounts then available for borrowing under the Company's revolving credit facilities) exceeds $60,000,000 and (ii) concurrently with any such Distributions pursuant to this **clause (5)(IV)**, the Company uses an amount of cash equal to such Distribution to redeem Preferred Stock pursuant to **Section 7(b)**;

(6) any arrangement or transaction between the Company and its Subsidiaries, on the one hand, and any Affiliate of the Company or any of its Subsidiaries, on the other hand (such arrangement or transactions, "**Affiliate Transactions**"); provided that, so long as no Mandatory Redemption Failure Event shall have occurred and be continuing, the Company and/or any of its Subsidiaries may, without the affirmative vote or consent of the Majority Holders, enter into (I) any Affiliate Transaction having a value in less than $1,000,000, (II) any such arrangement or transaction on arm's-length terms that has been approved by a majority of the Company's disinterested directors, (III) any ordinary course compensatory matter that has been approved by a majority of the Company's disinterested directors or by the compensation committee of the Board of Directors or (IV) any ordinary course transaction with a Consolidated Non-Wholly Owned Subsidiary for bona fide business purposes;

(7) any voluntary dissolution, liquidation, bankruptcy or winding up of the Company or any Material Subsidiary (unless such Material Subsidiary's assets are distributed only to the Company or a Wholly Owned Subsidiary of the Company in such liquidation or dissolution); and

(8) any acquisition, sale, disposition, investment or similar transaction (whether of an entity, business, equity interests or assets) by the Company or any of its Subsidiaries, directly or indirectly, and whether in a single transaction or series or related transactions, provided that, so long as no Mandatory Redemption Failure Event shall have occurred and be continuing, the Company and/or any of its Subsidiaries may:

(A) prior to an Investor Transfer Event, without the affirmative vote or consent of the Majority Holders, enter into such transaction if (i) the total consideration (including any contingent consideration and in each case whether in the form of cash, indebtedness, equity interests, other securities

or other assets and treating the assumption of liabilities as consideration) does not exceed $25,000,000 or (ii) the Company would have, immediately following such transaction and any related transactions, a Net Leverage Ratio of 1.50x or less; provided, further, that the Majority Holders shall consider in good faith any requests for transactions in excess of the thresholds contemplated on this clause (A) with any such approval to be made in the Majority Holders' sole discretion; and

(B) following an Investor Transfer Event, without the affirmative vote or consent of the Majority Holders, enter into such transaction if permitted under the terms of the Senior Credit Agreement (as in effect on the Initial Issue Date).

provided, *however*, that the taking of any action in contravention with any of the above consent rights shall be *ultra vires* and void *ab initio*; *provided further*, that each of the following will not require any vote or consent pursuant to **Section 9(a)(i)(1)** and **Section 9(a)(i)(2)**:

(I) any increase in the number of the authorized but unissued shares of the Company's undesignated Preferred Stock;

(II) any increase in the number of authorized shares of Preferred Stock as necessary with respect to issuances of shares of Preferred Stock in respect of Preferred Stock that was issued on the Initial Issue Date; and

(III) the creation and issuance, or increase in the authorized or issued number, of any shares of any class or series of stock that is both Dividend Junior Securities and Liquidation Junior Securities to the extent that such securities do not bear liquidity rights adversely affecting the rights, preferences or privileges of the Preferred Stock.

(ii) *Certain Amendments Permitted Without Consent*. Notwithstanding anything to the contrary in **Section 9(a)(i)(1)**, the Company may amend, modify or repeal any of the terms of the Preferred Stock without the vote or consent of any Holder to amend or correct this Certificate of Designations to cure any ambiguity or correct any omission, defect or inconsistency; provided, for the avoidance of doubt, that such amendment is not adverse to any Holder in any respect.

(iii) *Sacred Rights*. Notwithstanding anything to the contrary in **Section 9(a)(i)** and **Section 9(a)(ii)**, no amendment, modification, supplement or waiver (in each case, including by merger, consolidation or otherwise) of the following terms of this Certificate of Designations or of the following preferences, powers or rights of the Preferred Stock shall be made or given effect to bind and be effective with respect to all of the Preferred Stock then outstanding without the affirmative vote or consent of each Holder of the shares of Preferred Stock outstanding at such time, voting together as a separate class, whether or not such approval is required pursuant to the DGCL: (i) the definitions of Regular Dividend Rate, Default Dividend, Default Dividend Rate, Dividend Payment Date, Liquidation

Preference, Mandatory Redemption, Mandatory Redemption Date, Mandatory Redemption Price, Optional Redemption, Optional Redemption Date, Optional Redemption Price and Change of Control; (ii) **Section 5(a)**, **Section 7** or **Section 8**; or (iii) the Mandatory Redemption Price or the Change of Control Repurchase Price, as applicable, of any such share of Preferred Stock or delay the timing or change the method of payment with respect thereto.

(b) *Certain Actions.* Any actions taken by the Company or its Subsidiaries during the period from the execution and delivery of the Investment Agreement through and including the Initial Issue Date shall be deemed for all purposes hereunder to have occurred immediately following the issuance of the Preferred Stock, including for the purpose of calculation of the capacity available under any clause of **Section 9(a)**.

(c) *Procedures for Voting and Consents*.

(i) *Rules and Procedures Governing Votes and Consents* . If any vote or consent of the Holders will be held or solicited, including at an annual meeting or a special meeting of stockholders, then (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote or consent, subject to the other provisions of this **Section 9**; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote or provide consent, as applicable, rules governing the solicitation and use of proxies or written consents and customary procedures for the nomination and designation, by Holders, of directors for election.

(ii) *Voting Power of the Preferred Stock* . Each share of Preferred Stock outstanding as of the applicable record date will be entitled to one vote on each matter on which the Holders of the Preferred Stock are entitled to vote separately as a class and not together with the holders of any other class or series of stock.

(iii) *Written Consent in Lieu of Meeting.* Notwithstanding anything to the contrary otherwise set forth in the Certificate of Incorporation, the Bylaws or otherwise, a consent or affirmative vote of the Holders pursuant to **Section 9(a)** may be given or obtained in writing without a meeting.

Section 10. [Reserved].

Section 11. Investment Agreement. With respect to the shares of Preferred Stock held by the Investor Parties (as defined in the Investment Agreement), the Company and the Board of Directors incorporate by reference any and all provisions in the Investment Agreement that may be construed to limit in any way the primacy of the Board of Directors under Delaware law, including but not limited to Section 5.09 of the Investment Agreement. Such limitations shall apply so long as the Investment Agreement is in effect. For the avoidance of doubt, for purposes of Section 8.1 of the Certificate of Incorporation, references therein to "director" shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of

incorporation, as supplemented by this Certificate of Designation, in accordance with § 141(a) of the DGCL, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by the DGCL. The taking of any action in contravention with the Company's obligations under the Investment Agreement shall be *ultra vires* and void *ab initio*.

Section 12. Taxes. The Company shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Preferred Stock or certificates evidencing such shares.

Section 13. Term. Except as expressly provided in this Certificate of Designations, the shares of Preferred Stock shall not be redeemable or otherwise mature and the term of the Preferred Stock shall be perpetual.

Section 14. Calculations.

(a) *Responsibility; Schedule of Calculations*. Except as otherwise provided in this Certificate of Designations, the Company will be responsible for making all calculations called for under this Certificate of Designations or the Preferred Stock, including determinations of the Treasury Rate and accumulated Regular Dividends, whether or not declared, on the Preferred Stock. The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of such calculations to any Holder upon written request.

Section 15. Notices. The Company will send all notices or communications to Holders pursuant to this Certificate of Designations in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt requested from the recipient, in the case of e-mail), or sent by a nationally recognized overnight courier service guaranteeing next day delivery, to the Holders' respective addresses shown on the Register. Unless otherwise specified herein, all notices and communications hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service. Any notice hereunder to the Company shall be delivered to the address of the Company's principal executive offices as stated in its then-most recent current, periodic or annual report filed with the SEC under the Exchange Act and shall be addressed to the Company, attn: Chief Executive Officer (unless otherwise indicated by the Company in a written notice to the Holders).

Section 16. Facts Ascertainable. When the terms of this Certificate of Designations refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Company shall also maintain a written record of the Initial Issue Date, the number of shares of Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.

Section 17. Waiver. Notwithstanding any provision in this Certificate of Designations to the contrary, any provision contained herein and any right of the Holders of Preferred Stock granted hereunder may be waived as to all shares of Preferred Stock (and the Holders thereof) upon the vote or written consent of the Majority Holders.

Section 18. Severability. If any term of the Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

Section 19. No Other Rights. The Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designations (including under the Investment Agreement pursuant to Section 11) or the Certificate of Incorporation or as required by applicable law.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be duly executed as of the date first written above.

The ONE Group Hospitality, Inc.

By: _____
Name:
Title:

[Signature Page to Certificate of Designations]

EXHIBIT A

FORM OF PREFERRED STOCK CERTIFICATE

[*Insert Restricted Stock Legend, if applicable*]

The ONE Group Hospitality, Inc.

Series A Preferred Stock

Certificate No.[___]

The ONE Group Hospitality, Inc., a Delaware corporation (the "**Company**"), certifies that [___] is the registered owner of [___] shares of the Company's Series A Preferred Stock (the "**Preferred Stock**") evidenced by this certificate (this "**Certificate**"). The special rights, preferences and voting powers of the Preferred Stock are set forth in the Certificate of Designations of the Company establishing the Preferred Stock (the "**Certificate of Designations**"). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designations.

Additional terms of this Certificate are set forth on the other side of this Certificate.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, The ONE Group Hospitality, Inc. has caused this instrument to be duly executed as of the date set forth below.

The ONE Group Hospitality, Inc.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

[*legal name of Transfer Agent*], as Transfer Agent, certifies that this Certificate evidences shares of Series A Preferred Stock referred to in the within-mentioned Certificate of Designations.

Date: _____ By: _____
Authorized Signatory

The ONE Group Hospitality, Inc.

Series A Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Series A Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designations or the Certificate of Incorporation, the provisions of the of the Certificate of Designations or the Certificate of Incorporation, as applicable, will control.

1. **Countersignature**. This Certificate will not be valid until countersigned by the Transfer Agent.

2. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designations, which the Company will provide to any Holder at no charge, please send a written request to the following address:

The ONE Group Hospitality, Inc.
1624 Market Street, Suite 311
Denver, CO 80202
Attention: Secretary

ASSIGNMENT FORM

The ONE Group Hospitality, Inc.

Series A Preferred Stock

Subject to the terms of the Certificate of Designations, the undersigned Holder of the within Preferred Stock assigns to:

Name: _

Address: _

Social security or
tax identification
number: _

the within Preferred Stock and all rights thereunder irrevocably appoints:

as agent to transfer the within Preferred Stock on the books of the Company. The agent may substitute another to act for him/her.

Date:_____ _

(Legal Name of Holder)

By: _
Name:
Title:

EXHIBIT B

FORM OF RESTRICTED STOCK LEGEND

THE OFFER AND SALE OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN AN INVESTMENT AGREEMENT. THE COMPANY WILL GIVE TO THE HOLDER OF THIS CERTIFICATE A COPY OF SUCH INVESTMENT AGREEMENT, AS IN EFFECT ON THE DATE OF THE GIVING OF SUCH COPY, WITHOUT CHARGE, PROMPTLY AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR.

THE OFFER AND SALE OF THE SECURITIES (INCLUDING THE SHARES OF COMMON STOCK THAT MAY BE PURCHASED HEREUNDER) REPRESENTED BY THIS WARRANT (1) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY FOREIGN JURISDICTION, (2) MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS AND (3) ARE SUBJECT TO ADDITIONAL LIMITATIONS ON TRANSFER SPECIFIED IN THE INVESTMENT AGREEMENT, DATED AS OF MARCH 26, 2024, BETWEEN THE ONE GROUP HOSPITALITY, INC. AND THE HOLDERS PARTY THERETO, AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME.

Original Issue Date: [●], 2024

WARRANT CERTIFICATE NO. A - [●]

The ONE Group Hospitality, Inc.

Warrant to Purchase Shares of Common Stock

The ONE Group Hospitality, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that [●] (the "Holder"), subject to the terms and conditions hereof, shall be entitled to purchase from the Company, at any time and from time on or prior to the close of business on [●], 2034[1] (the "Expiration Date"), [__][2] shares of Common Stock (individually, a "Warrant Share" and collectively, the "Warrant Shares") of the Company, at a price per share equal to the Exercise Price. The number of Warrant Shares are subject to adjustment as provided herein, and all references to "shares of Common Stock" and "Exercise Price" herein shall be deemed to include any such adjustment or series of adjustments.

1. *Issuance; Terms and Usage; Definitions*. This warrant (this "Warrant") is being issued by the Company to the Holder in connection with the transactions contemplated by the Investment Agreement. Section 1.01 of the Investment Agreement is incorporated herein, *mutatis mutandis*, by this reference. The following terms used herein shall have the meanings set forth below when used in this Warrant:

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[1] To be the date which is ten years after the Original Issue Date.

[2] Warrants of Hill Path Investor and HPS Investor (each as defined in the Investment Agreement) to be documented in separate warrant certificates exercisable for a number of warrants to represent (i) 5.0% for Hill Path Investor and (ii) 0.33% for HPS Investor, for an aggregate amount of 5.33%, in each case of the fully diluted shares of common stock on the Closing Date. For this purpose, fully diluted shares of common stock means: (a) the number of all outstanding shares of common stock (excluding any held by the Company in treasury), plus (b) the number of all outstanding stock options (both vested and unvested), plus (c) the number of all outstanding unvested RSUs and PSUs, plus (d) the number of shares issuable under the Penny Warrants (as defined in the Investment Agreement). This calculation does not include, for confirmation, shares reserved but not issued and outstanding under the Company 2019 Equity Incentive Plan. For an illustration, if this calculation were completed using the outstanding shares of Common Stock (as of February 29, 2024) and outstanding stock options (both vested and unvested) and unvested RSUs and PSUs of the Company (in each case as of December 31, 2023), in each case as specified in the Company's Form 10-K filed on March 14, 2024, then 1,762,865 and 117,524 shares of Common Stock would be issuable under the Penny Warrants issued to the Hill Path Investor and HPS Investor, respectively. This calculation will be updated as of immediately prior to closing under the same methodology.

"Additional Warrants" means additional warrants of the Company issued pursuant to the Investment Agreement and any other warrants the Company may issue from time to time.

"Adjustment Event" has the meaning set forth in Section 6.11.

"Below Fair Market Value Issuance" has the meaning set forth in Section 6.3.

"Board" means the board of directors of the Company or committee of such board or any other governing body of any Subsidiary of the Company, in each case, duly authorized to act with the authority of such board.

"Business Combination" means a merger, consolidation, statutory share exchange, reorganization, recapitalization or similar extraordinary transaction (which may include a reclassification) involving the Company.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law or executive order to close or be closed.

"Cash Exercise" has the meaning set forth in Section 2.2(a).

"Cashless Exercise" has the meaning set forth in Section 2.2(b).

"Closing Date" has the meaning specified under the Investment Agreement.

"Common Stock" means the common stock, par value $0.0001 per share, of the Company.

"Company" has the meaning set forth in the introductory paragraph of this Warrant.

"Company 2019 Equity Incentive Plan" means The One Group Hospitality, Inc. 2019 Equity Incentive Plan, as amended from time to time.

"Determination Date" has the meaning set forth in Section 6.11.

"Distribution" has the meaning set forth in Section 6.2.

"Equity Securities" means, with respect to any Person, any (a) membership interests, units or shares of capital stock, (b) equity, ownership, voting, profit or participation interests or (c) 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.

"Excluded Transaction" means (a) any issuance of Equity Securities to employees, officers or directors of the Company or its subsidiaries pursuant to any stock option plan, equity incentive plan (including the Company 2019 Equity Incentive Plan) or other employee benefit arrangement approved by the Board, (b) any issuance of Warrant Shares hereunder or under any other Additional Warrants and/or (c) any issuance of Equity Securities in the following transactions: (i) any acquisition by the Company or any of its subsidiaries of any equity interests, assets, properties or business of any Person; (ii) any merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than a Business Combination subject to Section 6.4); (iii) the commencement of any transaction or series of related transactions involving a change of control of the Company (other than a Business Combination subject to Section 6.4); (iv) any private placement of warrants to purchase Equity Securities of the Company to lenders or other institutional investors in any arm's length transaction providing debt financing to the Company;

and (v) any issuance of Equity Securities by the Company in connection with which the Holder exercised its participation or preemptive rights in accordance with the Investment Agreement.

"Exercise" has the meaning set forth in Section 2.2.

"Exercise Date" means the date on which each of the requirements for a Cash Exercise and a Cashless Exercise are satisfied in accordance with Section 2.2(a) and Section 2.2(b), respectively.

"Exercise Price" means $0.01 per share of Common Stock.

"Expiration Date" has the meaning set forth in the introductory paragraph of this Warrant.

"Fair Market Value" of an Equity Security means, as of any date, if such Equity Security is listed or traded on a U.S. national securities exchange or market, the closing sale price of such Equity Security on the Business Day immediately prior to such date as reported in the composite transactions for the principal U.S. national securities exchange or market on which such Equity Security is so listed or traded, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national securities exchange on which such Equity Security is so listed or traded on the Business Day immediately prior to such date, or if such Equity Security is not so listed or traded on a U.S. national securities exchange or market, the last closing bid price of such Equity Security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if that bid price is not available, the market price of such Equity Security on the Business Day immediately prior to such date as determined by the Board in good faith, which determination shall be provided to the Holder in writing; provided, that if the Holder objects in writing to the market price as determined by the Board within five Business Days of receipt of notice of such determination, such market price shall be determined by an independent financial expert appointed for such purpose, using one or more valuation methods that the independent financial expert in its best professional judgment determines to be most appropriate, assuming such securities are fully distributed and are to be sold in an arm's-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors.

"Holder" has the meaning set forth in the introductory paragraph of this Warrant.

"Investment Agreement" means the Investment Agreement, dated as of the Original Issue Date, between the Company and the Holder, as amended, supplemented or otherwise modified from time to time.

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

"Public Sale" shall mean (a) an underwritten public offering pursuant to an effective registration statement (other than a registration statement on Form S-4, Form S-8 or any successor or other forms promulgated for similar purposes) filed under the Securities Act, (b) a "brokers' transaction" (as defined in Rule 144), (c) the acquisition, purchase, business combination, merger or consolidation of the Company or any direct or indirect parent of the Company into or with an entity that has, or whose direct or indirect parent has, previously consummated a public offering of Equity Securities and is a public company at the applicable time or (d) an offering pursuant to a direct listing of Equity Securities on a public stock exchange.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Shareholders" means holders of Common Stock.

"Warrant" has the meaning set forth in the introductory sentence of Section 1.

"Warrant Share" has the meaning set forth in the introductory paragraph of this Warrant.

2. *Exercise of Warrants*.

2.1 General Exercise. This Warrant may be exercised in whole or in part by the Holder at any time and from time to time prior to the close of business on the Expiration Date. Any exercise of this Warrant may be conditioned upon the occurrence of (a) a Public Sale of the Warrant Shares or (b) any event described in Section 8.3(c) or Section 8.3(e). Such conditional exercise shall be deemed revoked if such event or transaction does not occur on the date, or within the dates, specified in the applicable notice provided by or on behalf of the Company pursuant to Section 8 (if such a notice was provided).

2.2 Method of Exercise.

(a) Exercise for Cash. This Warrant may be exercised (a "Cash Exercise") by delivering this Warrant to the Company at its principal executive office, or at the office of its transfer agent, if any, accompanied by (i) the "Purchase Form" attached as Exhibit A, duly completed and executed on behalf of the Holder and (ii) payment to the Company in the amount equal to the Exercise Price multiplied by the number of Warrant Shares in respect of which this Warrant is then exercised, plus all taxes required to be paid by the Holder pursuant to Section 3, if any.

(b) Cashless Exercise. To the extent permitted by applicable law, this Warrant may be exercised, in whole or in part (a "Cashless Exercise"), into the number of Warrant Shares determined in accordance with this Section 2.2(b) by delivering this Warrant to the Company at its principal executive office, or at the office of its transfer agent, if any, accompanied by the "Purchase Form" attached as Exhibit A, duly completed and executed on behalf of the Holder. In the event of a Cashless Exercise, the Company shall issue to the Holder a number of Warrant Shares (rounded to the nearest whole number) computed using the following formula:

$$X = Y*(A - B) \div A.$$

"X" shall mean the net number of shares of Common Stock to be issued to the Holder pursuant to the Cashless Exercise;

"Y" shall mean the number of gross shares of Common Stock that would be issuable upon such exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a Cash Exercise rather than a Cashless Exercise;

"A" shall mean the Fair Market Value as of the Exercise Date;

"B" shall mean the Exercise Price.

The Company and the Holder agree, unless otherwise required by a change in law or by the Internal Revenue Service or other governmental authority following an audit or examination, (i) in the event of a Cashless Exercise under this Section 2.2(b), the Holder's surrender of this Warrant in exchange for the receipt of the Warrant Shares issuable in accordance with this Warrant (or the portion thereof being cancelled) shall be treated as a recapitalization under Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended and (ii) not to file any tax return inconsistent with the foregoing.

2.3 Issuance of Certificate(s); Authorization. Upon surrender of this Warrant and full compliance with each of the other requirements in Section 2.2, the Company shall, promptly, and in any event, within two Business Days, either (a) issue and cause to be delivered a certificate or certificates or (b)

instruct its transfer agent to register in book entry form, in either case to the Holder, or upon the written request of the Holder, in and to such name or names as the Holder may designate, a certificate or certificates (or book entry shares) for the number of Warrant Shares issuable upon the Cash Exercise or the Cashless Exercise, as the case may be. Such certificate or certificates (or book entry shares) shall not be deemed to have been issued, and any person so designated to be named therein shall not be deemed to have become or have any rights of a holder of record of such Warrant Shares, until all requirements set forth in Section 2.2 have been fully met by the Holder. The certificate(s) (or book entry shares) representing the Warrant Shares acquired upon the exercise of this Warrant shall bear the restrictive legend substantially in the form set forth on Exhibit B; provided, that, upon the reasonable request of the Holder, at any time, and from time to time, when such legend is no longer required under the Securities Act or applicable state laws and upon receipt by the Company of a favorable legal opinion to that effect from the Holder's counsel, the Company shall promptly remove such legend from any certificate representing the Warrant Shares (or issue one or more new certificates representing such Warrant Shares, which certificate(s) shall not contain a legend). The Company hereby represents and warrants that any shares of Common Stock issued upon the exercise of this Warrant in accordance with the provisions of Section 2.2 will be duly and validly authorized and issued and, fully-paid and non-assessable and, as of the time of such issuance, free from all taxes, liens and charges (other than liens or charges created by the Holder or taxes in respect of any transfer occurring contemporaneously therewith and restrictions under applicable securities laws and the Investment Agreement). The Company agrees that the Warrant Shares so issued will be deemed to have been issued to the Holder (and the Holder shall be the beneficial owner thereof) as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Warrant Shares may not be actually delivered on such date.

2.4 Full or Partial Exercise. This Warrant shall be exercisable, at the election of the Holder, either in full or in part and, in the event that this Warrant is exercised in respect of fewer than all of the Warrant Shares issuable on such exercise at any time prior to the Expiration Date, the Company shall promptly issue a new certificate evidencing the remaining Warrant or Warrants, in a form substantially identical hereto, in the name of the Holder, and delivered to the Holder or to another person that the Holder has designated for delivery as soon as practicable, and in any event not exceeding three Business Days from such exercise.

3. *Payment of Taxes*. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names (provided that the Holder has complied with the restrictions on transfer set forth herein and in the Investment Agreement) as may be directed by the Holder; provided that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by a properly executed assignment in form attached as Exhibit C; and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

4. *Mutilated, Missing or Lost Warrant*. In the event that this Warrant shall be mutilated, lost, stolen or destroyed, the Company shall issue and countersign, in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and substitution for its loss, theft or destruction, a new Warrant with identical terms, representing an equivalent number of Warrant Shares and dated the same date as this Warrant that was mutilated, lost, stolen or destroyed, but only upon receipt of evidence and indemnity or other security reasonably satisfactory to the Company of the loss, theft or destruction of this Warrant.

5. *Reservation of Warrant Shares*.

5.1 At all times prior to the Expiration Date, the Company shall reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of issuance upon the exercise of this Warrant, a number of shares of Common Stock equal to the aggregate Warrant Shares then issuable upon the exercise of this Warrant. The Company shall use reasonable best efforts to take all such actions as may be necessary to ensure that all such shares of Common Stock may be so issued without violating the Company's certificate of incorporation or bylaws, any debt agreements or material agreements to which the Company is a party, any requirements of any national securities exchange upon which shares of Common Stock may be listed or any applicable laws. The Company shall not take any action which would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares of Common Stock required to be reserved hereunder for issuance upon exercise of the Warrants.

5.2 The Company covenants that it will take such actions as may be necessary or appropriate in order that all Warrant Shares issued upon exercise of this Warrant in accordance with Section 2.2 will, upon issuance in accordance with the terms of this Warrant, be validly authorized and issued, fully-paid, non-assessable and free from any and all (a) security interests created by or imposed upon the Company, (b) taxes, liens and charges with respect to the issuance thereof and (c) preemptive rights or any other similar contractual rights. If at any time prior to the Expiration Date the number and kind of authorized but unissued shares of Common Stock of the Company's equity shall not be sufficient to permit exercise in full of this Warrant, the Company will as promptly as practicable take such corporate action as may, in the opinion of its counsel, be reasonably necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes. Neither this Warrant nor the Warrant Shares will be, when issued, subject to any restrictions on transfer under applicable law or any contract to which the Company is a party, other than, in the case of restrictions on transfer, those under applicable state and federal securities laws, the Investment Agreement and/or the restrictions on transfer set forth herein.

5.3 The Company represents and warrants to the Holder that the Company submitted to NASDAQ Stock Market LLC an "Application for Listing of Additional Shares" with respect to the Warrant Shares. The Company will use its commercially reasonable efforts to maintain the listing of the Warrant Shares for so long as the Common Stock is then so listed in NASDAQ Stock Market LLC and/or any other national securities exchange or market on which the Common Stock is listed or traded.

5.4 The Company represents and warrants to the Holder that the issuance of this Warrant and the issuance of shares of Common Stock upon exercise thereof in accordance with the terms hereof will not constitute a breach of, or a default under, any other material agreements to which the Company is a party.

6. *Anti-dilution Adjustments and Other Rights of Holders*.

6.1 Changes to Common Stock. If the Company (a) declares, orders, pays or makes a dividend or a distribution on its Common Stock payable in shares of Common Stock, (b) splits, subdivides or reclassifies its outstanding Common Stock into a larger number of shares of Common Stock, (c) combines or reclassifies its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (d) increases or decreases the number of Common Stock outstanding by reclassification of its shares of Common Stock (in each case, other than a transaction to which Section 6.6 is applicable), then the number of Warrant Shares purchasable upon exercise of this Warrant immediately after the happening of such event shall be adjusted so that, after giving effect to such adjustment, the Holder shall be entitled to receive the number of Warrant Shares upon exercise that such Holder would have owned or have been entitled to receive had this Warrant been exercised immediately prior to the happening of such event (or, in the case of a dividend or distribution of shares of Common Stock, immediately prior to the

record date therefor). An adjustment made pursuant to this Section 6.1 shall become effective immediately after the effective date, retroactive to the record date therefor in the case of a dividend or distribution in shares of Common Stock, and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

6.2 Cash Distributions and Other Distributions. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction, other than a dividend or distribution covered by Section 6.1) (a "Distribution"), then, in each such case, on the date on which such Distribution is made, the Holder on the record date of such Distribution shall be entitled to receive the Distribution with respect to the number of Warrant Shares that would have been issuable upon a complete exercise of this Warrant as of the record date of such Distribution.

6.3 Issuances Below the Fair Market Value. If the Company issues shares of Common Stock or any securities or rights convertible or exchangeable into, or having an interest equivalent to, Common Stock entitling the holder thereof to receive, directly or indirectly, shares of Common Stock or securities or rights convertible or exchangeable into, or having an interest equivalent to, shares of Common Stock ("Common Stock Equivalent"), at a price for such shares of Common Stock or Common Stock Equivalent that is less than 95% of the Fair Market Value of shares of Common Stock immediately prior to such issuance (a "Below Fair Market Value Issuance"), other than an issuance to which Section 6.1 applies, then immediately upon such Below Fair Market Value Issuance, the number of Warrant Shares purchasable upon exercise of this Warrant shall be increased to equal to the product of (a) the number of Warrant Shares purchasable upon exercise of this Warrant prior to the Below Fair Market Value Issuance multiplied by (b) a fraction, (i) the numerator of which is the sum of (x) the number of shares of Common Stock of the Company outstanding prior to the Below Fair Market Value Issuance, (y) the number of Warrant Shares purchasable upon exercise of this Warrant prior to the Below Fair Market Value Issuance and (z) the number of Equity Securities issued pursuant to the Below Fair Market Value Issuance and (ii) the denominator of which is the sum of (x) the number of shares of Common Stock of the Company outstanding prior to the Below Fair Market Value Issuance, (y) the number of Warrant Shares purchasable upon exercise of this Warrant prior to the Below Fair Market Value Issuance and (z) the number of shares of Common Stock that would have been purchased in the Below Fair Market Value Issuance had the total consideration paid in such issuance been used to purchase shares of Common Stock at the Fair Market Value of such shares of Common Stock.

Notwithstanding the foregoing, this Section 6.3 shall not apply to underwritten offerings registered with the Commission under the Securities Act.

6.4 Business Combinations. In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock subject to adjustment pursuant to Section 6.1), notwithstanding anything to the contrary contained herein (except subject to Section 6.5), the Holder's right to receive Warrant Shares upon exercise of this Warrant shall be converted, effective upon the occurrence of such Business Combination or reclassification, into the right to exercise this Warrant to acquire the number of shares of stock or other securities or property (including cash) that the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of this Warrant in full immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if applicable, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to the Holder's right to exercise this Warrant in exchange for any shares of stock or other securities or property pursuant to this paragraph. In determining the kind and amount of stock, securities or the property receivable upon exercise

of this Warrant upon and following adjustment pursuant to this paragraph, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the Holder shall have the right to make the same election upon exercise of this Warrant with respect to the number of shares of stock or other securities or property which the Holder will receive upon exercise of this Warrant.

6.5 Transactions Excluded from Adjustment Provisions. Notwithstanding anything herein to the contrary, no adjustment shall be made pursuant to this Section 6 to the number of Warrant Shares or cash, property or other securities, as the case may be, issuable upon exercise of this Warrant in connection with any Excluded Transaction.

6.6 Successive Adjustments. Successive adjustments in the number of shares of Common Stock for which this Warrant is exercisable shall be made, without duplication, whenever any event specified in this Section 6 shall occur.

6.7 Notice of Adjustments. Upon the occurrence of each adjustment of the number of Warrant Shares or cash, property and/or other securities issuable upon the exercise of this Warrant, the Company, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and shall promptly give written notice to the Holder of each adjustment pursuant to this Section 6 to the number of Warrant Shares or cash, property and/or other securities, as the case may be. The notice shall describe the adjustment and show in reasonable detail the facts on which the adjustment is based. In the event that the Company proposes to (a) make any distribution to all Shareholders, (b) repurchase shares of Common Stock pursuant to an offer made to all Shareholders, or (c) consummate a Business Combination or take any other action that would give rise to an adjustment of the number of Warrant Shares or cash, property and/or other securities issuable upon the exercise of this Warrant under this Section 6, then the Company shall, at its expense and 30 days prior to the proposed record date of such distribution or consummation of a Business Combination or the proposed repurchase date, in each case, send written notice to the Holder specifying such date and a description of the action to be taken.

6.8 No Adjustment if Participating. Notwithstanding the foregoing provisions of this Section 6, no adjustment shall be made hereunder, nor shall an adjustment be made to the ability of a Holder to exercise, for any distribution described herein if the Holder will otherwise participate in the distribution with respect to its Warrant Shares without exercise of this Warrant (without giving effect to any separate exercise of preemptive rights).

6.9 Calculations. All adjustments made to the Warrant Shares issuable upon exercise of each Warrant pursuant to this Section 6 shall be calculated to the nearest one-hundredth of a Warrant Share (0.0001). Except as described in this Section 6, the Company will not adjust the number of Warrant Shares for which this Warrant is exercisable. No adjustments of the number of Warrant Shares issuable upon the exercise of this Warrant that would otherwise be required shall be made unless and until such adjustment either by itself or with other adjustments not previously made increases or decreases by at least 0.1% the number of Warrant Shares issuable upon the exercise of this Warrant immediately prior to the making of such adjustment. Any adjustment representing a change of less than such minimum amount shall be carried forward and made as soon as such adjustment, together with other adjustments required by this Section 6 and not previously made, would result in a minimum adjustment.

6.10 Adjustment Event. In any case in which this Section 6 provides that an adjustment shall become effective immediately after (a) a record date or record date for an event, (b) the date fixed for the determination of Shareholders entitled to receive a dividend or distribution pursuant to this Section 6 or (c) a date fixed for the determination of Shareholders entitled to receive rights or warrants pursuant to this Section 6 (each a "Determination Date"), the Company may elect to defer until the occurrence of the applicable Adjustment Event issuing to the Holder of any Warrant exercised after such Determination Date

and before the occurrence of such Adjustment Event, the additional Warrant Shares or other securities issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment. For purposes of this Section 6, the term "Adjustment Event" shall mean:

(A) in any case referred to in clause (a) of this Section 6.11, the occurrence of such event,

(B) in any case referred to in clause (b) of this Section 6.11, the date any such dividend or distribution is paid or made, and

(C) in any case referred to in clause (c) of this Section 6.11, the date of expiration of such rights or warrants.

7. *No Impairment.* The Company will not, through reorganization, consolidation, merger, dissolution, issue or sale of securities, sale of assets or any other voluntary action, willfully avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against wrongful impairment.

8. *Notices*.

8.1 Notices Generally. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof: (a) to the Company, at its principal executive offices as stated in its then-most recent current, periodic or annual report filed with the U.S. Securities and Exchange Commission under the U.S. Securities Exchange Act of 1934 and shall be addressed to the Company, attn: Chief Executive Officer (unless otherwise indicated by the Company in a written notice to the Holder); and (b) to the Holder, at the Holder's address on Exhibit D (unless otherwise indicated by the Holder in a written notice to the Company) and to such other persons identified in Exhibit D (unless otherwise indicated by the Holder in a written notice to the Company).

8.2 Notice of Adjustment. Whenever the number of Warrant Shares and other property, if any, issuable upon the exercise of the Warrants is adjusted, as herein provided, the Company shall deliver to the Holder a certificate of its Chief Financial Officer setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated and specifying the number of Warrant Shares issuable upon exercise of the Warrants after giving effect to such adjustment.

8.3 Notice of Certain Transactions. In the event the Company shall propose to (a) distribute any dividend or other distribution to all Shareholders or options, warrants or other rights to receive such dividend or distribution, (b) offer to all Shareholders rights to subscribe for or to purchase any securities convertible into shares of stock of any class or any other securities, rights or options, (c) effect any Business Combination, capital reorganization, reclassification, consolidation or merger, (d) effect the voluntary or involuntary dissolution, liquidation or winding-up of the Company or (e) make a tender offer or exchange offer with respect to the Common Stock, the Company shall promptly send to the Holder a notice of such proposed action or offer at its address as it appears on the register of the Company, which shall specify the record date for the purposes of such dividend, distribution or rights, or the date such issuance or event is to take place and the date of participation therein by the Shareholders, if any such date is to be fixed, and shall briefly indicate the effect, if any, of such action on the Common Stock and on the number and kind of any other equity interests and on property, if any, and the number of shares of Common Stock and other property, if any, issuable upon exercise of each Warrant and the Exercise Price after giving

effect to any such adjustment pursuant to Section 6 which will be required as a result of such action. Such notice shall be given as promptly as possible and, in any case, at least 30 days prior to the date of the taking of such action, or participation therein, by the Shareholders.

9. *Tax Treatment*. The parties agree that the Warrants shall be treated as equity of the Company for U.S. federal income tax purposes, and the parties agree not to take any position inconsistent with this treatment unless otherwise required by applicable law.

10. *Registration Rights*. The Holder of this Warrant shall have such registration rights for the Warrant Shares to the extent provided in the Registration Rights Agreement, dated as of [●], 2024, by and among the Company, HPC III Kaizen LP and HPS Investment Partners, LLC, as amended, supplemented or otherwise modified from time to time, subject to its terms and conditions.

11. *No Rights as Shareholder until Exercise*. Except as otherwise provided herein or in the Investment Agreement, this Warrant does not entitle the Holder to any of the rights as a Shareholder prior to the exercise hereof, including the right to receive dividends or other distributions, exercise any rights to vote or to consent or to receive notice as Shareholders in respect of the meetings of shareholders or the election of directors of the Company or any other matter. No provision thereof and no mere enumeration therein of the rights or privileges of any Holder shall give rise to any liability of such Holder for the Exercise Price hereunder or as a Shareholder, whether such liability is asserted by the Company or by creditors of the Company.

12. *Successors and Assigns*. The terms and provisions of this Warrant shall inure to the benefit of, and be binding upon, the Company and the Holder and their respective successors and permitted assigns.

13. *Governing Law; Venue*. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflict of law principles. All actions arising out of or relating to this Warrant shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such action. The consents to jurisdiction and venue set forth in this Section 13 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any action arising out of or relating to this Warrant shall be effective if notice is given in accordance with Section 8.

14. *Severability*. In the event that one or more of the provisions of this Warrant shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Warrant, but this Warrant shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. *Change or Waiver*. Any term of this Warrant may be changed or waived only by an instrument in writing signed by the party against which enforcement is sought. Any amendment or waiver effected in accordance with this Section 15 shall be binding upon each of the Holder and the Company and their respective successors and permitted assigns. No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Warrant or to exercise any right or remedy consequent upon a breach of such or any other covenant, agreement, term or condition shall operate as a waiver of such or any other covenant, agreement, term or condition of this Warrant. No waiver shall affect or alter the remainder of this Warrant but each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach.

The rights and remedies provided by this Warrant are cumulative and the exercise of any one right or remedy by any party shall not preclude or waive its right to exercise any or all other rights or remedies.

16. *Headings*. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

17. *Counterparts*. This Warrant may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

18. *No Inconsistent Agreements*. The Company shall not, on or after the date hereof, enter into any agreement with respect to its securities which conflicts with the rights granted to the Holder in this Warrant. The Company represents and warrants to the Holder that the rights granted hereunder do not in any way conflict with the rights granted to holders of the Company's securities under any other agreements.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have each caused this Warrant to be duly executed as of the date first written above.

The ONE Group Hospitality, Inc.

By: _
Name:
Title:

[Signature Page to Warrant]

[_____]

By: _
Name:
Title:

[Signature Page to Warrant]

EXHIBIT A TO WARRANT

PURCHASE FORM

To: The ONE Group Hospitality, Inc. Dated:_____

The undersigned hereby irrevocably elects to purchase _____ shares of Common Stock of The ONE Group Hospitality, Inc., a Delaware corporation, pursuant to the purchase provisions of Section 2.2 of the attached Warrant and herewith makes payment of $_____, representing the full purchase price for such shares of Common Stock at the price per share provided for in the Warrant.

Cashless Exercise: • (*If checked, the aggregate Exercise Price will be paid by withholding shares of Common Stock in accordance with Section 2.2(b) (Cashless Exercise) of the Warrant*)

[●]

Signature: _____

Name: _____

Title: _____

Address: _____

EXHIBIT B TO WARRANT

FORM OF RESTRICTIVE LEGEND

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO NUMEROUS CONDITIONS AND RESTRICTIONS, INCLUDING RESTRICTIONS ON TRANSFER, AS SPECIFIED IN THE INVESTMENT AGREEMENT, DATED AS OF MARCH 26, 2024, BY AND BETWEEN THE ONE GROUP HOSPITALITY, INC., A DELAWARE CORPORATION (THE "COMPANY") AND THE HOLDERS PARTY THERETO, AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME (THE "INVESTMENT AGREEMENT"). A COPY OF THE INVESTMENT AGREEMENT AS IN EFFECT FROM TIME TO TIME SHALL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY FOREIGN JURISDICTION, (B) MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS, AND (C) ARE SUBJECT TO AND ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH, THE PROVISIONS OF THE INVESTMENT AGREEMENT."

EXHIBIT C TO WARRANT

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ (the " **Holder**") hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant with respect to the number of shares of common stock, par value $0.0001 per share, of [●] covered thereby set forth below, unto:

Name of Assignee	Address	No. of Shares of Common Stock
_____ (the "**Assignee**")		

HOLDER

Dated:_____

Signature:_____

Name: _____

Title: _____

By signing below, the Assignee acknowledges that it qualifies as an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended.

ASSIGNEE

Dated:_____

Signature:_____

Name: _____

Title: _____

EXHIBIT D TO WARRANT

NOTICE

[_____]
c/o [Holder]
[Address]
Attention: [__]
Email: [__]

A copy of all notices provided to the Holder in accordance with the Warrant shall also be provided to the following (provided that delivery of such copy shall not constitute notice):

[_____]
c/o [Holder]
[Address]
Attention: [__]
Email: [__]

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Tracey A. Zaccone
Benjamin Heriaud
Email: Tracey.Zaccone@stblaw.com
Benjamin.Heriaud@stblaw.com

THE OFFER AND SALE OF THE SECURITIES (INCLUDING THE SHARES OF COMMON STOCK THAT MAY BE PURCHASED HEREUNDER) REPRESENTED BY THIS WARRANT (1) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY FOREIGN JURISDICTION, (2) MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS AND (3) ARE SUBJECT TO ADDITIONAL LIMITATIONS ON TRANSFER SPECIFIED IN THE INVESTMENT AGREEMENT, DATED AS OF MARCH 26, 2024, BETWEEN THE ONE GROUP HOSPITALITY, INC. AND THE HOLDERS PARTY THERETO, AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME.

Original Issue Date: [●], 2024

WARRANT CERTIFICATE NO. A - [●]

The ONE Group Hospitality, Inc.

Warrant to Purchase Shares of Common Stock

The ONE Group Hospitality, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that [●] (the "Holder"), subject to the terms and conditions hereof, shall be entitled to purchase from the Company, at any time and from time on or prior to the close of business on [●], 2029[1] (the "Expiration Date"), [●][2] shares of Common Stock (individually, a "Warrant Share" and collectively, the "Warrant Shares") of the Company, at a price per share equal to the Exercise Price. The number of Warrant Shares are subject to adjustment as provided herein, and all references to "shares of Common Stock" and "Exercise Price" herein shall be deemed to include any such adjustment or series of adjustments.

1. *Issuance; Terms and Usage; Definitions*. This warrant (this "Warrant") is being issued by the Company to the Holder in connection with the transactions contemplated by the Investment Agreement. Section 1.01 of the Investment Agreement is incorporated herein, *mutatis mutandis*, by this reference. The following terms used herein shall have the meanings set forth below when used in this Warrant:

"Additional Warrants" means additional warrants of the Company issued pursuant to the Investment Agreement and any other warrants the Company may issue from time to time.

"Adjustment Event" has the meaning set forth in Section 6.11.

"Below Fair Market Value Issuance" has the meaning set forth in Section 6.2.

"Board" means the board of directors of the Company or committee of such board or any other governing body of any Subsidiary of the Company, in each case, duly authorized to act with the authority of such board.

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[1] To be the date which is five years after the Original Issue Date.

[2] Warrants of Hill Path Investor and HPS Investor (each as defined in the Investment Agreement) to be documented in separate warrant certificates exercisable for (i) 1,000,000 shares of common stock to Hill Path Investor and (ii) 66,667 shares of common stock to HPS Investor, for an aggregate amount of 1,066,667 shares of common stock.

"Business Combination" means a merger, consolidation, statutory share exchange, reorganization, recapitalization or similar extraordinary transaction (which may include a reclassification) involving the Company.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law or executive order to close or be closed.

"Closing Date" has the meaning specified under the Investment Agreement.

"Common Stock" means the common stock, par value $0.0001 per share, of the Company.

"Company" has the meaning set forth in the introductory paragraph of this Warrant.

"Company 2019 Equity Incentive Plan" means The One Group Hospitality, Inc. 2019 Equity Incentive Plan.

"Determination Date" has the meaning set forth in Section 6.11.

"Distribution" has the meaning set forth in Section 6.2.

"Equity Securities" means, with respect to any Person, any (a) membership interests, units or shares of capital stock, (b) equity, ownership, voting, profit or participation interests or (c) 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.

"Excluded Transaction" means (a) any issuance of Equity Securities to employees, officers or directors of the Company or its subsidiaries pursuant to any stock option plan, equity incentive plan (including the Company 2019 Equity Incentive Plan) or other employee benefit arrangement approved by the Board, (b) any issuance of Warrant Shares hereunder or under any other Additional Warrants and/or (c) any issuance of Equity Securities in the following transactions: (i) any acquisition by the Company or any of its subsidiaries of any equity interests, assets, properties or business of any Person; (ii) any merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than a Business Combination subject to Section 6.4); (iii) the commencement of any transaction or series of related transactions involving a change of control of the Company (other than a Business Combination subject to Section 6.4); (iv) any private placement of warrants to purchase Equity Securities of the Company to lenders or other institutional investors in any arm's length transaction providing debt financing to the Company; and (v) any issuance of Equity Securities by the Company in connection with which the Holder exercised its participation or preemptive rights in accordance with the Investment Agreement.

"Exercise" has the meaning set forth in Section 2.2.

"Exercise Date" means the date on which each of the requirements for a Cash Exercise are satisfied in accordance with Section 2.2.

"Exercise Price" means $10.00 per share of Common Stock.

"Expiration Date" has the meaning set forth in the introductory paragraph of this Warrant.

"Fair Market Value" of an Equity Security means, as of any date, if such Equity Security is listed or traded on a U.S. national securities exchange or market, the closing sale price of such Equity Security on the Business Day immediately prior to such date as reported in the composite transactions for the principal U.S. national securities exchange or market on which such Equity Security is so listed or

traded, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national securities exchange on which such Equity Security is so listed or traded on the Business Day immediately prior to such date, or if such Equity Security is not so listed or traded on a U.S. national securities exchange or market, the last closing bid price of such Equity Security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if that bid price is not available, the market price of such Equity Security on the Business Day immediately prior to such date as determined by the Board in good faith, which determination shall be provided to the Holder in writing; provided, that if the Holder objects in writing to the market price as determined by the Board within five Business Days of receipt of notice of such determination, such market price shall be determined by an independent financial expert appointed for such purpose, using one or more valuation methods that the independent financial expert in its best professional judgment determines to be most appropriate, assuming such securities are fully distributed and are to be sold in an arm's-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors.

"Holder" has the meaning set forth in the introductory paragraph of this Warrant.

"Investment Agreement" means the Investment Agreement, dated as of the Original Issue Date, between the Company and the Holder, as amended, supplemented or otherwise modified from time to time.

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

"Public Sale" shall mean (a) an underwritten public offering pursuant to an effective registration statement (other than a registration statement on Form S-4, Form S-8 or any successor or other forms promulgated for similar purposes) filed under the Securities Act, (b) a "brokers' transaction" (as defined in Rule 144), (c) the acquisition, purchase, business combination, merger or consolidation of the Company or any direct or indirect parent of the Company into or with an entity that has, or whose direct or indirect parent has, previously consummated a public offering of Equity Securities and is a public company at the applicable time or (d) an offering pursuant to a direct listing of Equity Securities on a public stock exchange.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Shareholders" means holders of Common Stock.

"Warrant" has the meaning set forth in the introductory sentence of Section 1.

"Warrant Share" has the meaning set forth in the introductory paragraph of this Warrant.

2. *Exercise of Warrants*.

2.1 General Exercise. This Warrant may be exercised in whole or in part by the Holder at any time and from time to time prior to the close of business on the Expiration Date. Any exercise of this Warrant may be conditioned upon the occurrence of (a) a Public Sale of the Warrant Shares or (b) any event described in Section 8.3(c) or Section 8.3(e). Such conditional exercise shall be deemed revoked if such event or transaction does not occur on the date, or within the dates, specified in the applicable notice provided by or on behalf of the Company pursuant to Section 8 (if such a notice was provided).

2.2 Method of Exercise. This Warrant may be exercised (a " Cash Exercise") by delivering this Warrant to the Company at its principal executive office, or at the office of its transfer agent, if any, accompanied by (a) the "Purchase Form" attached as Exhibit A, duly completed and executed on

behalf of the Holder and (b) payment to the Company in the amount equal to the Exercise Price multiplied by the number of Warrant Shares in respect of which this Warrant is then exercised, plus all taxes required to be paid by the Holder pursuant to Section 3, if any.

2.3 Issuance of Certificate(s); Authorization. Upon surrender of this Warrant and full compliance with each of the other requirements in Section 2.2, the Company shall, promptly, and in any event, within two Business Days, either (a) issue and cause to be delivered a certificate or certificates or (b) instruct its transfer agent to register in book entry form, in either case to the Holder, or upon the written request of the Holder, in and to such name or names as the Holder may designate, a certificate or certificates (or book entry shares) for the number of Warrant Shares issuable upon the Cash Exercise. Such certificate or certificates (or book entry shares) shall not be deemed to have been issued, and any person so designated to be named therein shall not be deemed to have become or have any rights of a holder of record of such Warrant Shares, until all requirements set forth in Section 2.2 have been fully met by the Holder. The certificate(s) (or book entry shares) representing the Warrant Shares acquired upon the exercise of this Warrant shall bear the restrictive legend substantially in the form set forth on Exhibit B; provided, that, upon the reasonable request of the Holder, at any time, and from time to time, when such legend is no longer required under the Securities Act or applicable state laws and upon receipt by the Company of a favorable legal opinion to that effect from the Holder's counsel, the Company shall promptly remove such legend from any certificate representing the Warrant Shares (or issue one or more new certificates representing such Warrant Shares, which certificate(s) shall not contain a legend). The Company hereby represents and warrants that any shares of Common Stock issued upon the exercise of this Warrant in accordance with the provisions of Section 2.2 will be duly and validly authorized and issued, fully-paid and non-assessable and, as of the time of such issuance, free from all taxes, liens and charges (other than liens or charges created by the Holder or taxes in respect of any transfer occurring contemporaneously therewith and restrictions under applicable securities laws and the Investment Agreement). The Company agrees that the Warrant Shares so issued will be deemed to have been issued to the Holder (and the Holder shall be the beneficial owner thereof) as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Warrant Shares may not be actually delivered on such date.

2.4 Full or Partial Exercise. This Warrant shall be exercisable, at the election of the Holder, either in full or in part and, in the event that this Warrant is exercised in respect of fewer than all of the Warrant Shares issuable on such exercise at any time prior to the Expiration Date, the Company shall promptly issue a new certificate evidencing the remaining Warrant or Warrants, in a form substantially identical hereto, in the name of the Holder, and delivered to the Holder or to another person that the Holder has designated for delivery as soon as practicable, and in any event not exceeding three Business Days from such exercise.

2.5 Lock-Up. The Holder agrees that it will not exercise this Warrant for a period of 30 days following the Closing Date.

3. *Payment of Taxes*. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names (provided that the Holder has complied with the restrictions on transfer set forth herein and in the Investment Agreement) as may be directed by the Holder; provided that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by a properly executed assignment in form attached as Exhibit C; and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

4. *Mutilated, Missing or Lost Warrant*. In the event that this Warrant shall be mutilated, lost, stolen or destroyed, the Company shall issue and countersign, in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and substitution for its loss, theft or destruction, a new Warrant with identical terms, representing an equivalent number of Warrant Shares and dated the same date as this Warrant that was mutilated, lost, stolen or destroyed, but only upon receipt of evidence and indemnity or other security reasonably satisfactory to the Company of the loss, theft or destruction of this Warrant.

5. *Reservation of Warrant Shares*.

5.1 At all times prior to the Expiration Date, the Company shall reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of issuance upon the exercise of this Warrant, a number of shares of Common Stock equal to the aggregate Warrant Shares then issuable upon the exercise of this Warrant. The Company shall use reasonable best efforts to take all such actions as may be necessary to ensure that all such shares of Common Stock may be so issued without violating the Company's certificate of incorporation or bylaws, any debt agreements or material agreements to which the Company is a party, any requirements of any national securities exchange upon which shares of Common Stock may be listed or any applicable laws. The Company shall not take any action which would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares of Common Stock required to be reserved hereunder for issuance upon exercise of the Warrants.

5.2 The Company covenants that it will take such actions as may be necessary or appropriate in order that all Warrant Shares issued upon exercise of this Warrant in accordance with Section 2.2 will, upon issuance in accordance with the terms of this Warrant, be validly authorized and issued, fully-paid, non-assessable and free from any and all (a) security interests created by or imposed upon the Company, (b) taxes, liens and charges with respect to the issuance thereof and (c) preemptive rights or any other similar contractual rights. If at any time prior to the Expiration Date the number and kind of authorized but unissued shares of Common Stock of the Company's equity shall not be sufficient to permit exercise in full of this Warrant, the Company will as promptly as practicable take such corporate action as may, in the opinion of its counsel, be reasonably necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes. Neither this Warrant nor the Warrant Shares will be, when issued, subject to any restrictions on transfer under applicable law or any contract to which the Company is a party, other than, in the case of restrictions on transfer, those under applicable state and federal securities laws, the Investment Agreement and/or the restrictions on transfer set forth herein.

5.3 The Company represents and warrants to the Holder that the Company submitted to NASDAQ Stock Market LLC an "Application for Listing of Additional Shares" with respect to the Warrant Shares. The Company will use its commercially reasonable efforts to maintain the listing of the Warrant Shares for so long as the Common Stock is then so listed in NASDAQ Stock Market LLC and/or any other national securities exchange or market on which the Common Stock is listed or traded.

5.4 The Company represents and warrants to the Holder that the issuance of this Warrant and the issuance of shares of Common Stock upon exercise thereof in accordance with the terms hereof will not constitute a breach of, or a default under, any other material agreements to which the Company is a party.

6. *Anti-dilution Adjustments and Other Rights of Holders*.

6.1 Changes to Common Stock. If the Company (a) declares, orders, pays or makes a dividend or a distribution on its Common Stock payable in shares of Common Stock, (b) splits, subdivides or reclassifies its outstanding Common Stock into a larger number of shares of Common Stock, (c) combines or reclassifies its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (d) increases or decreases the number of Common Stock outstanding by reclassification

of its shares of Common Stock (in each case, other than a transaction to which Section 6.6 is applicable), then, in each such case, on the date on which such event happens, the Exercise Price of this Warrant shall be reduced to a price determined in accordance with the formula set forth below:

$$EP_2 = EP_1 * (A) \div (B).$$

(a) "EP_2" shall mean the Exercise Price in effect immediately after such event;

(b) "EP_1" shall mean the Exercise Price in effect immediately prior to such event;

(c) "A" shall mean the number of shares of Common Stock immediately after the close of business on the record date for such event;

(d) "B" shall mean the number of shares of Common Stock outstanding immediately prior to the close of business on the record date for such event.

An adjustment made pursuant to this Section 6.1 shall become effective immediately after the effective date, retroactive to the record date therefor in the case of a dividend or distribution in shares of Common Stock, and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

6.2 Cash Distributions and Other Distributions. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction, other than a dividend or distribution covered by Section 6.1) (a "Distribution"), then, in each such case, on the date on which such Distribution is made, the Exercise Price of this Warrant shall be reduced to a price determined in accordance with the formula set forth below:

$$EP2 = EP1 * (A) \div (A + B).$$

(a) "EP2" shall mean the Exercise Price in effect immediately after such Distribution;

(b) "EP1" shall mean the Exercise Price in effect immediately prior to such Distribution;

(c) "A" shall mean the Fair Market Value per share of the Common Stock on the last Trading Day immediately preceding the first date on which the shares of Common Stock trade regular way without the right to receive such Distribution;

(d) "B" shall mean (i) if the Distribution is in cash, the amount in cash distributed to Holders per share of Common Stock or (ii) if the Distribution is not in cash, the fair market value (as determined in good faith by the Board) of the shares of stock or other securities, property or options that are distributed to Holders per share of Common Stock.

Such adjustment shall become effective immediately after 5:00 p.m., New York City time, on the record date for such Distribution. If any cash Distribution is declared but not so paid, the number of Warrant Shares for which this Warrant is exercisable shall again be adjusted to the number of Warrant Shares for which this Warrant is exercisable that would then be in effect if such dividend or distribution had not been declared (and the Exercise Price also correspondingly readjusted). No adjustment shall be made pursuant to this Section 6.2 which shall have the effect of decreasing the number of Warrant Shares issuable upon exercise of this Warrant.

6.3 Issuances Below the Fair Market Value. If the Company issues shares of Common Stock or any securities or rights convertible or exchangeable into, or having an interest equivalent to, Common Stock entitling the holder thereof to receive, directly or indirectly, shares of Common Stock or securities or rights convertible or exchangeable into, or having an interest equivalent to, shares of Common Stock ("Common Stock Equivalent"), at a price for such shares of Common Stock or Common Stock Equivalent that is less than 95% of the Fair Market Value of shares of Common Stock immediately prior to such issuance (a "Below Fair Market Value Issuance"), other than an issuance to which Section 6.1 applies, then immediately upon such Below Fair Market Value Issuance, the Exercise Price of this Warrant shall be reduced to a price determined in accordance with the formula set forth below:

$$EP_2 = EP_1 * (A + B) \div (A + C).$$

(a) "EP_2" shall mean the Exercise Price in effect immediately after such Below Fair Market Value Issuance;

(b) "EP_1" shall mean the Exercise Price in effect immediately prior to such Below Fair Market Value Issuance;

(c) "A" shall mean the number of shares of Common Stock of the Company outstanding prior to the Below Fair Market Value Issuance;

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such additional shares of Common Stock had been issued or deemed issued at a price per share equal to Fair Market Value (determined by dividing the aggregate consideration received by the Company in respect of such issue by Fair Market Value); and

(e) "C" shall mean the number of such additional shares of Common Stock issued in such Below Fair Market Value Issuance.

Notwithstanding the foregoing, this Section 6.3 shall not apply to underwritten offerings registered with the Commission under the Securities Act.

6.4 Business Combinations. In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock subject to adjustment pursuant to Section 6.1), notwithstanding anything to the contrary contained herein (except subject to Section 6.5), the Holder's right to receive Warrant Shares upon exercise of this Warrant shall be converted, effective upon the occurrence of such Business Combination or reclassification, into the right to exercise this Warrant to acquire the number of shares of stock or other securities or property (including cash) that the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of this Warrant in full immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if applicable, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to the Holder's right to exercise this Warrant in exchange for any shares of stock or other securities or property pursuant to this paragraph. In determining the kind and amount of stock, securities or the property receivable upon exercise of this Warrant upon and following adjustment pursuant to this paragraph, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the Holder shall have the right to make the same election upon exercise of this Warrant with respect to the number of shares of stock or other securities or property which the Holder will receive upon exercise of this Warrant.

6.5 Transactions Excluded from Adjustment Provisions. Notwithstanding anything herein to the contrary, no adjustment shall be made pursuant to this Section 6 to the number of Warrant Shares or cash, property or other securities, as the case may be, issuable upon exercise of this Warrant in connection with any Excluded Transaction.

6.6 Successive Adjustments. Successive adjustments in the number of shares of Common Stock for which this Warrant is exercisable shall be made, without duplication, whenever any event specified in this Section 6 shall occur.

6.7 Notice of Adjustments. Upon the occurrence of each adjustment of the number of Warrant Shares or cash, property and/or other securities issuable upon the exercise of this Warrant, the Company, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and shall promptly give written notice to the Holder of each adjustment pursuant to this Section 6 to the number of Warrant Shares or cash, property and/or other securities, as the case may be. The notice shall describe the adjustment and show in reasonable detail the facts on which the adjustment is based. In the event that the Company proposes to (a) make any distribution to all Shareholders, (b) repurchase shares of Common Stock pursuant to an offer made to all Shareholders, or (c) consummate a Business Combination or take any other action that would give rise to an adjustment of the number of Warrant Shares or cash, property and/or other securities issuable upon the exercise of this Warrant under this Section 6, then the Company shall, at its expense and 30 days prior to the proposed record date of such distribution or consummation of a Business Combination or the proposed repurchase date, in each case, send written notice to the Holder specifying such date and a description of the action to be taken.

6.8 No Adjustment if Participating. Notwithstanding the foregoing provisions of this Section 6, no adjustment shall be made hereunder, nor shall an adjustment be made to the ability of a Holder to exercise, for any distribution described herein if the Holder will otherwise participate in the distribution with respect to its Warrant Shares without exercise of this Warrant (without giving effect to any separate exercise of preemptive rights).

6.9 Calculations. All adjustments made to the Warrant Shares issuable upon exercise of each Warrant pursuant to this Section 6 shall be calculated to the nearest one-hundredth of a Warrant Share (0.0001). Except as described in this Section 6, the Company will not adjust the number of Warrant Shares for which this Warrant is exercisable. No adjustments of the number of Warrant Shares issuable upon the exercise of this Warrant that would otherwise be required shall be made unless and until such adjustment either by itself or with other adjustments not previously made increases or decreases by at least 0.1% the number of Warrant Shares issuable upon the exercise of this Warrant immediately prior to the making of such adjustment. Any adjustment representing a change of less than such minimum amount shall be carried forward and made as soon as such adjustment, together with other adjustments required by this Section 6 and not previously made, would result in a minimum adjustment.

6.10 Adjustment Event. In any case in which this Section 6 provides that an adjustment shall become effective immediately after (a) a record date or record date for an event, (b) the date fixed for the determination of Shareholders entitled to receive a dividend or distribution pursuant to this Section 6 or (c) a date fixed for the determination of Shareholders entitled to receive rights or warrants pursuant to this Section 6 (each a "Determination Date"), the Company may elect to defer until the occurrence of the applicable Adjustment Event issuing to the Holder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional Warrant Shares or other securities issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment. For purposes of this Section 6, the term "Adjustment Event" shall mean:

(A) in any case referred to in clause (a) of this Section 6.11, the occurrence of such event,

(B) in any case referred to in clause (b) of this Section 6.11, the date any such dividend or distribution is paid or made, and

(C) in any case referred to in clause (c) of this Section 6.11, the date of expiration of such rights or warrants.

7. *No Impairment.* The Company will not, through reorganization, consolidation, merger, dissolution, issue or sale of securities, sale of assets or any other voluntary action, willfully avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against wrongful impairment.

8. *Notices*.

8.1 Notices Generally. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof: (a) to the Company, at its principal executive offices as stated in its then-most recent current, periodic or annual report filed with the U.S. Securities and Exchange Commission under the U.S. Securities Exchange Act of 1934 and shall be addressed to the Company, attn: Chief Executive Officer (unless otherwise indicated by the Company in a written notice to the Holder); and (b) to the Holder, at the Holder's address on Exhibit D (unless otherwise indicated by the Holder in a written notice to the Company) and to such other persons identified in Exhibit D (unless otherwise indicated by the Holder in a written notice to the Company).

8.2 Notice of Adjustment. Whenever the number of Warrant Shares and other property, if any, issuable upon the exercise of the Warrants is adjusted, as herein provided, the Company shall deliver to the Holder a certificate of its Chief Financial Officer setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated and specifying the number of Warrant Shares issuable upon exercise of the Warrants after giving effect to such adjustment.

8.3 Notice of Certain Transactions. In the event the Company shall propose to (a) distribute any dividend or other distribution to all Shareholders or options, warrants or other rights to receive such dividend or distribution, (b) offer to all Shareholders rights to subscribe for or to purchase any securities convertible into shares of stock of any class or any other securities, rights or options, (c) effect any Business Combination, capital reorganization, reclassification, consolidation or merger, (d) effect the voluntary or involuntary dissolution, liquidation or winding-up of the Company or (e) make a tender offer or exchange offer with respect to the Common Stock, the Company shall promptly send to the Holder a notice of such proposed action or offer at its address as it appears on the register of the Company, which shall specify the record date for the purposes of such dividend, distribution or rights, or the date such issuance or event is to take place and the date of participation therein by the Shareholders, if any such date is to be fixed, and shall briefly indicate the effect, if any, of such action on the Common Stock and on the number and kind of any other equity interests and on property, if any, and the number of shares of Common Stock and other property, if any, issuable upon exercise of each Warrant and the Exercise Price after giving effect to any such adjustment pursuant to Section 6 which will be required as a result of such action. Such notice shall be given as promptly as possible and, in any case, at least 30 days prior to the date of the taking of such action, or participation therein, by the Shareholders.

9. *Registration Rights*. The Holder of this Warrant shall have such registration rights for the Warrant Shares to the extent provided in the Registration Rights Agreement, dated as of [●], 2024, by and among the Company, HPC III Kaizen LP and HPS Investment Partners, LLC, as amended, supplemented or otherwise modified from time to time, subject to its terms and conditions.

10. *No Rights as Shareholder until Exercise* . Except as otherwise provided herein or in the Investment Agreement, this Warrant does not entitle the Holder to any of the rights as a Shareholder prior to the exercise hereof, including the right to receive dividends or other distributions, exercise any rights to vote or to consent or to receive notice as Shareholders in respect of the meetings of shareholders or the election of directors of the Company or any other matter. No provision thereof and no mere enumeration therein of the rights or privileges of any Holder shall give rise to any liability of such Holder for the Exercise Price hereunder or as a Shareholder, whether such liability is asserted by the Company or by creditors of the Company.

11. *Successors and Assigns*. The terms and provisions of this Warrant shall inure to the benefit of, and be binding upon, the Company and the Holder and their respective successors and permitted assigns.

12. *Governing Law; Venue*. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflict of law principles. All actions arising out of or relating to this Warrant shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such action. The consents to jurisdiction and venue set forth in this Section 12 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any action arising out of or relating to this Warrant shall be effective if notice is given in accordance with Section 8.

13. *Severability*. In the event that one or more of the provisions of this Warrant shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Warrant, but this Warrant shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. *Change or Waiver*. Any term of this Warrant may be changed or waived only by an instrument in writing signed by the party against which enforcement is sought. Any amendment or waiver effected in accordance with this Section 14 shall be binding upon each of the Holder and the Company and their respective successors and permitted assigns. No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Warrant or to exercise any right or remedy consequent upon a breach of such or any other covenant, agreement, term or condition shall operate as a waiver of such or any other covenant, agreement, term or condition of this Warrant. No waiver shall affect or alter the remainder of this Warrant but each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach. The rights and remedies provided by this Warrant are cumulative and the exercise of any one right or remedy by any party shall not preclude or waive its right to exercise any or all other rights or remedies.

15. *Headings*. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

16. *Counterparts*. This Warrant may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

17. *No Inconsistent Agreements*. The Company shall not, on or after the date hereof, enter into any agreement with respect to its securities which conflicts with the rights granted to the Holder in this Warrant. The Company represents and warrants to the Holder that the rights granted hereunder do not in any way conflict with the rights granted to holders of the Company's securities under any other agreements.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have each caused this Warrant to be duly executed as of the date first written above.

The ONE Group Hospitality, Inc.

By: _
Name:
Title:

[Signature Page to Warrant]

[_____]

By:
Name:
Title:

[Signature Page to Warrant]

EXHIBIT A TO WARRANT

PURCHASE FORM

To: The ONE Group Hospitality, Inc. Dated:_____

The undersigned hereby irrevocably elects to purchase _____ shares of Common Stock of The ONE Group Hospitality, Inc., a Delaware corporation, pursuant to the purchase provisions of Section 2.2 of the attached Warrant and herewith makes payment of $_____, representing the full purchase price for such shares of Common Stock at the price per share provided for in the Warrant.

[●]

Signature: _____

Name: _____

Title: _____

Address: _____

EXHIBIT B TO WARRANT

FORM OF RESTRICTIVE LEGEND

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO NUMEROUS CONDITIONS AND RESTRICTIONS, INCLUDING RESTRICTIONS ON TRANSFER, AS SPECIFIED IN THE INVESTMENT AGREEMENT, DATED AS OF MARCH 26, 2024, BY AND BETWEEN THE ONE GROUP HOSPITALITY, INC., A DELAWARE CORPORATION (THE "COMPANY") AND THE HOLDERS PARTY THERETO, AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME (THE "INVESTMENT AGREEMENT"). A COPY OF THE INVESTMENT AGREEMENT AS IN EFFECT FROM TIME TO TIME SHALL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY FOREIGN JURISDICTION, (B) MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS, AND (C) ARE SUBJECT TO AND ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH, THE PROVISIONS OF THE INVESTMENT AGREEMENT."

EXHIBIT C TO WARRANT

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ (the " **Holder**") hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant with respect to the number of shares of common stock, par value $0.0001 per share, of The ONE Group Hospitality, Inc. covered thereby set forth below, unto:

Name of Assignee	Address	No. of Shares of Common Stock

_____ (the "**Assignee**")

HOLDER

Dated:_____

Signature:_____

Name: _____

Title: _____

By signing below, the Assignee acknowledges that it qualifies as an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended.

ASSIGNEE

Dated:_____

Signature:_____

Name: _____

Title: _____

EXHIBIT D TO WARRANT

NOTICE

[_____]
c/o [Holder]
[Address]
Attention: [__]
Email: [__]

A copy of all notices provided to the Holder in accordance with the Warrant shall also be provided to the following (provided that delivery of such copy shall not constitute notice):

[_____]
c/o [Holder]
[Address]
Attention: [__]
Email: [__]

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Tracey A. Zaccone
Benjamin Heriaud
Email: Tracey.Zaccone@stblaw.com
Benjamin.Heriaud@stblaw.com

Exhibit 10.6

REGISTRATION RIGHTS AGREEMENT

BY AND AMONG

THE ONE GROUP HOSPITALITY, INC.

HPC III KAIZEN LP

AND

HPS INVESTMENT PARTNERS, LLC

Dated as of [●], 2024

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this " **Agreement**") is entered into as of [●], 2024, by and among The ONE Group Hospitality, Inc., a Delaware corporation (including its successors and permitted assigns, the "**Company**") and HPC III Kaizen LP, a Delaware limited partnership (the " **Hill Path Investor**") and HPS Investment Partners, LLC, a Delaware limited liability company (the "**HPS Investor**" and together with the Hill Path Investor, the "**Investors**"). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A.

This Agreement is entered into in connection with the closing of the issuance of warrants (the " **Warrants**") to purchase shares of the Company's Common Stock pursuant to the Investment Agreement, dated as of March 26, 2024, by and among the Company and the Investors (as amended, supplemented or otherwise modified from time to time, the " **Investment Agreement**").

As a condition to each of the parties' obligations under the Investment Agreement, the Company and the Investors are entering into this Agreement for the purpose of granting certain registration rights to each of the Investors.

In consideration of the promises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
RESALE SHELF REGISTRATION

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall file within ninety (90) days of the date hereof and use its reasonable best efforts to cause to go effective as promptly as practicable thereafter, but no later than one hundred and eighty (180) days following the date hereof, a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the " **Resale Shelf Registration Statement**" and such registration, the " **Resale Shelf Registration**"), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but no later than one hundred and eighty (180) days following the date hereof.

Notwithstanding the foregoing, if the Commission prevents the Company from including any or all of the Registrable Securities on the Resale Shelf Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Registrable Securities by the Holders, the Resale Shelf Registration Statement shall register the resale of a number of shares of the Registrable Securities which is equal to the maximum number of shares as is permitted by the Commission, and, subject to the provisions of this Section 1.1, the Company shall continue to its use reasonable best efforts to register all remaining Registrable Securities as set forth in this Section 1.1. In such event, the number of shares of Registrable Securities to be registered for each Holder in the Resale Shelf Registration Statement shall be reduced pro rata among all Holders, provided, however, that, prior to reducing the number of shares of Registrable Securities to be registered for any Holder in such Resale Shelf Registration Statement, the Company shall

first remove any shares of Registrable Securities to be registered for any Person other than a Holder that was proposed to be included in such Resale Shelf Registration Statement. The Company shall continue to use its reasonable best efforts to register all remaining Registrable Securities as promptly as practicable in accordance with the applicable rules, regulations and guidance of the Commission. Notwithstanding anything herein to the contrary, if the Commission, by written comment, limits the Company's ability to file, or prohibits or delays the filing of, a Resale Shelf Registration Statement or a Subsequent Shelf Registration with respect to any or all the Registrable Securities, the Company's compliance with such limitation, prohibition or delay solely to the extent of such limitation, prohibition or delay shall not be a breach or default by the Company under this Agreement and shall not be deemed a failure by the Company to use "reasonable best efforts" as set forth above or elsewhere in this Agreement.

Section 1.2 Effectiveness Period. Once effective, the Company shall, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statement or a Subsequent Shelf Registration to be continuously effective and usable for so long as any Registrable Securities remain outstanding (the " **Effectiveness Period**").

Section 1.3 Subsequent Shelf Registration. If (i) any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period or (ii) the Company issues additional Registrable Securities to a Holder that are not covered by any Shelf Registration, the Company shall use its reasonable best efforts to promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration and including by filing an amendment to cover additional Registrable Securities), and in any event shall within thirty (30) days of such cessation of effectiveness or issuance of additional Registrable Securities, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or to register such additional Registrable Securities or, file an additional registration statement (a " **Subsequent Shelf Registration**") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such registration statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration.

Section 1.5 Subsequent Holder Notice. If a Person becomes a Holder of Registrable Securities after a Shelf Registration becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a " **Subsequent Holder Notice**"):

(a) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.5(a) to be filed; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 ____Underwritten Offering. Each Hill Path Holder of Registrable Securities may, on up to two (2) occasions after the Resale Shelf Registration Statement becomes effective deliver a written notice to the Company specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through a marketed, underwritten offering, which may include a block trade or registered direct offering, so long as the anticipated gross proceeds of such marketed underwritten offering is not less than twenty five million dollars ($25,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities in which case no such minimum gross proceeds threshold shall apply) (the " **Marketed Underwritten Offering**"). In the event of a Marketed Underwritten Offering:

(a) The Holder or Holders of a majority of the Registrable Securities participating in an Marketed Underwritten Offering shall select the managing underwriter or underwriters to administer the Marketed Underwritten Offering; provided, however, that such Holder or Holders will not make the choice of such managing underwriter or underwriters without reasonable consultation with the Company and without obtaining the Company's prior written consent, which the Company shall not unreasonably withhold, delay or condition; provided further that, such Holder or Holders may make such choice without the prior written consent of the Company but, if such written consent is not obtained, then the Company and its officers and management will have no obligation to engage in road shows or other marketing activities pursuant to Section 3.1(n).

(b) Notwithstanding any other provision of this Section 1.6, if the managing underwriter or underwriters of a proposed Marketed Underwritten Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Marketed Underwritten Offering exceeds the number which can be sold in such Marketed Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.

Section 1.7 Shelf Take-Downs .

(a) Subject to the other applicable provisions of this Agreement, at any time that any Resale Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a "**Take-Down Notice**") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Resale Shelf Registration Statement (a "**Shelf Offering**") and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions

of this Agreement, the Company shall, as promptly as practicable, amend or supplement the Resale Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering. Any such Shelf Offering may be underwritten (through a block trade or otherwise) or may be a "registered direct" offering; provided that if a Shelf Offering shall be a marketed underwritten offering, Section 1.6 shall apply.

(b) The Holder or Holders of a majority of the Registrable Securities participating in a Shelf Offering shall select the managing underwriter or underwriters (or placement agent, as applicable) to administer the Shelf Offering; provided, however, that such Holder or Holders will not make the choice of such managing underwriter or underwriters without reasonable consultation with the Company and without obtaining the Company's prior written consent, which the Company shall not unreasonably withhold, delay or condition; provided further that, such Holder or Holders may make such choice without the prior written consent of the Company but, if such written consent is not obtained, then the Company and its officers and management will have no obligation to engage in road shows or other marketing activities pursuant to Section 3.1(n).

(c) Notwithstanding any other provision of this Section 1.7, if the managing underwriter or underwriters (or placement agent, as the case may be) of a proposed Shelf Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Shelf Offering exceeds the number which can be sold in such Shelf Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such Shelf Offering. If any Holder disapproves of the terms of any such Shelf Offering, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters (or placement agent, as applicable).

ARTICLE II
COMPANY REGISTRATION

Section 2.1 Notice of Registration. If at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its Common Stock, whether or not for its own account (other than a registration statement on Form S-4, Form S-8 or any successor forms), the Company will:

(a) promptly give to each Holder written notice thereof, which notice shall be given, to the extent reasonably practicable, no later than five (5) Business Days prior to the filing or launch date (except in the case of an offering that is an "overnight offering," in which case such notice must be given no later than two (2) Business Days prior to the filing or launch date or in the case of any Shelf Offering pursuant to Section 1.7, no later than one (1) Business Day); and

(b) subject to Section 2.2, include in such registration or underwritten offering (and any related qualification under blue sky laws or other compliance) all the Registrable Securities specified in a written request or requests made within three (3) Business Days after receipt of such written notice from the Company by any Holder (except in the case of an offering that is an "overnight offering," in which case such request must be made no later than one (1) Business Day after receipt of such written notice from the Company).

Section 2.2 Underwriting. The right of any Holder to registration pursuant to Section 1.6, Section 1.7 or this Article II shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder

proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected in accordance with Section 1.6(a) (such underwriting agreement to be in a customary form negotiated by the Company or such stockholders, as the case may be). Notwithstanding any other provision of this Article II, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number which can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, in the event such offering was initiated by the Company for its own account, up to the total number of securities that the Company has requested to be included in such registration, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that the Holders have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (c) third, and only if all the securities referred to in clause (b) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.3 Right to Terminate Registration. The Company or the holders of securities who have caused a registration statement to be filed as contemplated by Article I or Article II, as the case may be, shall have the right to have any registration initiated by it or them under Article I or Article II terminated or withdrawn prior to the effectiveness thereof, whether or not any Holder has elected to include securities in such registration.

ARTICLE III
ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

Section 3.1 Registration Procedures. In the case of each registration effected by the Company pursuant to Article I or Article II, the Company will keep each Holder participating in such registration reasonably informed as to the status thereof and, at its expense, the Company will, as expeditiously as possible to the extent applicable:

(a) prepare and file, as promptly as reasonably practicable, with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement;

(b) prepare and file, as promptly as reasonably practicable, with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) furnish to the Holders participating in such registration and to their legal counsel copies of the registration statement proposed to be filed, and provide such Holders and their legal counsel the reasonable opportunity to review and comment on such registration statement; provided, that the Company shall not have any obligation to modify any information if the Company reasonably expects that

so doing would cause such registration statement or the prospectus used in connection with such registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading;

(d) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as such underwriters may reasonably request in order to facilitate the public offering of such securities;

(e) use commercially reasonable efforts to notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the Company's knowledge of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.1(n), at the request of any such Holder, prepare promptly and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchaser of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing; provided, that each selling Holder of such Registrable Securities, upon receipt of any notice from the Company pursuant to Section 3.1(k) of any event of the kind described in this Section 3.1(e), shall immediately discontinue disposition of the Registrable Securities pursuant to such registration statement covering such Registrable Securities until such Holder is advised in writing by the Company that the use of such prospectus may be resumed and is furnished with a supplemented or amended prospectus as contemplated by this Section 3.1(e) (which shall occur within the time periods described in Section 3.1(k)), and if so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities at the time of receipt of such notice;

(f) use reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions in which it is not already qualified;

(g) in the event that the Registrable Securities are being offered in a Marketed Underwritten Offering, enter into and perform its obligations under an underwriting agreement on customary terms and in accordance with the applicable provisions of this Agreement;

(h) use commercially reasonable efforts to furnish, (i) on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters and to the extent required by the applicable underwriting agreement, an opinion and negative assurance letter, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) on the date that the offering of such Registrable Securities is priced and on the date that such securities are being sold through underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters to the extent required by the applicable underwriting agreement;

(i) in connection with a customary due diligence review, make available upon reasonable notice and during business hours for inspection by the Holders, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Holders or underwriter, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, to the extent reasonably necessary to enable them to exercise their due diligence responsibilities, and cause the officers, directors and employees of the Company and its subsidiaries to supply all relevant information and participate in customary due diligence sessions, in each case, as reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement; provided, however, each such underwriter shall agree in writing to hold in strict confidence and not to make any disclosure or use of any information requested above (the "**Requested Information**"), unless (1) the disclosure of the Requested Information is necessary to avoid or correct a misstatement or omission in such registration or is otherwise required under the Securities Act, (2) the release of the Requested Information is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, (3) the Requested Information is or has been made generally available to the public other than by disclosure in violation of this Agreement or other obligation of confidentiality, (4) the Requested Information was within such underwriter's possession on a non-confidential basis prior to it being furnished to such underwriter by or on behalf of the Company or any of its representatives, provided that the source of such information was not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information or (5) the Requested Information becomes available to such underwriter on a non-confidential basis from a source other than the Company or any of its representatives, provided that such source is not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information. Such underwriter agrees that it shall, upon learning that disclosure of the Requested Information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Requested Information deemed confidential;

(j) in the event that any broker-dealer underwrites any Registrable Securities or participates as a member of an underwriting syndicate or selling group or "participates in an offering" (within the meaning of the FINRA Rules) thereof, whether as a Holder or as an underwriter, placement, sales agent or broker or dealer in respect thereof, or otherwise, the Company will, upon the reasonable request of such broker-dealer, comply with any reasonable request of such broker-dealer in complying with the FINRA Rules;

(k) notwithstanding any other provision of this Agreement, if the Board of Directors of the Company has determined in good faith that the disclosure necessary for continued use of the prospectus and registration statement by the Holders could be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus, prospectus supplement and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company's records; provided, however, that in any 12-month period the Company may exercise the right to such suspension not more than two times. Such written notice shall not contain a statement of the reasons for such suspension, but shall contain the anticipated length of such suspension. The Company expressly agrees that the Investor shall not receive any material non-public information in connection with any such notice. From and after the date of a notice of suspension under this Section 3.1(k), each Holder agrees not to use the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted or (ii) the day following the sixtieth (60^{th}) day of suspension within any 12-month period;

(l) cooperate with, and direct the Company's transfer agent to cooperate with, the Holders and the managing underwriters, if any, to facilitate the timely settlement of any offering or sale of Registrable Securities, including the preparation and delivery of certificates or book-entry representing Registrable Securities to be sold together with any other authorizations, certificates, opinions and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without restriction upon sale by the holder of such shares of Registrable Securities;

(m) use its reasonable best efforts to cause all shares of Common Stock issued or issuable upon exercise of the Registrable Securities to be listed on the national securities exchange on which the Common Stock is then listed; and

(n) subject to the final proviso in Section 1.6(a), cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities (including, without limitation, participation in "road shows" and other customary marketing activities, which may be virtual).

Section 3.2 Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not enter into any agreement granting any holder or prospective holder of any securities of the Company any shelf, demand, piggyback or incidental registration rights with respect to such securities that are, with respect to priority on underwriting cutbacks, senior to the rights granted to the Holders herein, without the prior written consent of Holders of a majority of the Registrable Securities.

Section 3.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration or sale pursuant to this Agreement or otherwise in complying with this Agreement shall be borne by the Company. All Selling Expenses relating to securities registered for resale on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration.

Section 3.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them and the distribution proposed by such Holder or Holders as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I or II are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will cooperate with the Company in connection with the preparation of the applicable registration statement, and for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and such other information as may be required by applicable law to enable the Company to prepare such registration statement and the related prospectus covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders may be engaged in a distribution of the Registrable Securities, such Holder or Holders will comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, among other things: (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws and (ii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders, such copies of the applicable prospectus (as amended

and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree; and

(c) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(k), or that requires the suspension by such Holder or Holders of the distribution of any of the Registrable Securities owned by such Holder or Holders pursuant to a registered offering, then such Holders shall cease offering or distributing the Registrable Securities owned by such Holder or Holders in a registered offering until the offering and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 3.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company will use reasonable best efforts to:

(a) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act;

(b) so long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request, to the extent accurate, a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act; and

(c) deliver any instructions, certificates or legal opinions required by the transfer agent in connection with a disposition of Registrable Securities pursuant to Rule 144, in each case of this clause (c), if customary representation letters are executed and delivered by the seller of the Registrable Securities to the Company and its counsel to confirm factual matters having a bearing on the availability of Rule 144; and such seller has delivered reasonably requested documentation to the transfer agent.

Section 3.6 " Market Stand-Off" Agreement. The Holders shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities of the Company) held by the Holders (other than those included in the registration) for a period specified by the representatives of the managing underwriter or underwriters of Common Stock (or other securities of the Company convertible into Common Stock) not to exceed five (5) days prior and sixty (60) days following the pricing of any registered public sale of securities by the Company in which such Holder participates in accordance with Article II, subject to customary exceptions (including, without limitation, to the extent that any securities of the Company are subject to an Equity Loan (as defined in the Investment Agreement), to permit the pledge of such securities pursuant to such Equity Loan and any foreclosure in connection with such Equity Loan, or transfer in lieu of a foreclosure thereunder, and subsequent sales, dispositions or other transfers). Each of the Holders also shall execute and deliver any "lock-up" agreement reasonably requested by the representatives of any underwriters of the Company in connection with an offering in which such Holder participates, subject to customary exceptions (including, without limitation, as described in the preceding sentence in respect of pledges and foreclosures); provided that such obligation shall only apply where (i) all executive officers and directors are similarly bound and (ii) the terms of the Investors' lock-up are no more restrictive than the terms of the lock-ups applicable to any other stockholder who has registration rights with respect to the Common Stock or securities convertible into, or exchangeable or exercisable for, such securities that has executed such a lockup (and, if the Company or the managing underwriters agree to waive any such lockup for any such other stockholder, the Company shall also waive the Investors' lockup pro rata to the same extent). In addition, and notwithstanding anything to the contrary contained in this Section 3.6, the Company shall agree and shall cause its executive officers and directors to agree to execute a "lock-up" agreement reasonably requested by the representatives of any underwriters (or placement agents, as the case may be) in connection with any Marketed Underwritten Offering or Shelf

Offering, as applicable, subject to customary exceptions and for a term reasonably requested by the representatives of such underwriters (or placement agents, as the case may be) and in any case, such term shall not exceed 60 days following the pricing of such offering; provided, further that the Holders participating in such offering shall use commercially reasonable efforts to reduce the time period applicable to any such "lock-up" (to a period not shorter than 30 days) after consultation with any such underwriters (or placement agents, as the case may be).

ARTICLE IV
INDEMNIFICATION

Section 4.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder's current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the " **Company Indemnified Parties**"), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and the Company will reimburse each of the Company Indemnified Parties for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly, the Company, each of its directors, officers, partners, members, managers, shareholders, accountants, attorneys, agents and employees, each underwriter, if any, of the Company's securities covered by such a registration, each Person who controls the Company or such underwriter within

the meaning of Section 15 of the Securities Act, and each other Holder and each of such other Holder's officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act (collectively, the " **Holder Indemnified Parties**"), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse each of the Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act

Section 4.3 Notification. Each party entitled to indemnification under this Article IV (the " **Indemnified Party**") shall give notice to the party required to provide indemnification (the " **Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense at such party's expense; provided, further, however, that an Indemnified Party (together with all other Indemnified Parties) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Article IV, only to the extent that, the failure to give such notice is materially prejudicial or harmful to an Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have.

Section 4.4 Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions that resulted in such claims, loss, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were based solely upon the number of entities from whom contribution was requested or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4.4. The Holders' obligations to contribute as provided in this Section 4.4 are several in proportion to their respective purchase obligations and not joint, and in no event shall any Holder's contribution obligation under this Section 4.4 exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE V
TRANSFER AND TERMINATION OF REGISTRATION RIGHTS

Section 5.1 Transfer of Registration Rights. The rights to cause the Company to register the resale of securities granted to a Holder under this Agreement may be assigned to any Person in connection with any Transfer (as defined in the Investment Agreement) or assignment of Registrable Securities in a Transfer permitted by Section 5.07 of the Investment Agreement; provided, however, that (a) such transfer may otherwise be effected in accordance with applicable securities laws, (b) prior written notice of such assignment is given to the Company, and (c) such transferee agrees in writing to be bound by, and subject to, this Agreement as a " Holder" pursuant to a written instrument in form and substance reasonably acceptable to the Company.

Section 5.2 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register the resale of securities under Article I and Article II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

MISCELLANEOUS.

Section 6.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Facsimile, PDF copies or other electronic transmission of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means. "**Electronic Signatures**" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

Section 6.2 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(b) Any dispute relating hereto shall be heard in the Court of Chancery of the State of Delaware and, if applicable, in any state or federal court located in the State of Delaware in which appeal from the Court of Chancery of the State of Delaware may validly be taken under the laws of the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over such dispute, any state or federal court within the State of Delaware) (each a " **Chosen Court**" and collectively, the " **Chosen Courts**"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the " **Applicable Matters**") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 6.5 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 6.3 Entire Agreement; No Third Party Beneficiary. This Agreement and the Investment Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. Except as provided in Article IV, this Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.4 Expenses. Except as provided in Section 3.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses.

Section 6.5 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in the foregoing clause (a) or (b), when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

The ONE Group Hospitality, Inc.
1624 Market Street, Suite 311
Denver, CO 80202
Attention: Chief Executive Officer and Chief Financial Officer
Email: LegalNotices@togrp.com

with a copy (which shall not constitute notice) to:

Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Attention: Steven H. Hull; Will Goodling
Email: steven.hull@stoel.com; will.goodling@stoel.com

If to the Hill Path Investor, to:

HPC III Kaizen LP
150 East 58th Street 32nd Floor
New York, NY 10155
Attention: James Chambers
Email: chambers@Hillpathcap.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Ave
New York, New York 10017
Attention: Tracey A. Zaccone
Matthew B. Rogers
Benjamin N. Heriaud
Email: Tracey.Zaccone@stblaw.com
MRogers@stblaw.com
Benjamin.Heriaud@stblaw.com

If to the HPS Investor, to:

HPS Investment Partners, LLC
40 West 57th Street
New York, NY 10019
Attention: Daniel Zevnik
Email: daniel.zevnik@hpspartners.com

with a copy (which shall not constitute notice) to:

Milbank LLP
55 Hudson Yards
New York, NY 10001-2163
Attention: John Britton
Email: JBritton@milbank.com

Section 6.6 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in Section 5.1, no assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

Section 6.7 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.8 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Company and the Holders of a majority of the Registrable Securities outstanding at the time of such amendment. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.9 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and paragraph references are to the Sections and paragraphs in this Agreement unless otherwise specified; (iii) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified; and (iv) the word "or" , "any" or "either" shall not be exclusive. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (and unless, otherwise required by law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day)

(b) With regard to each and every term and condition of this Agreement, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition, no consideration will be given to the issue of which any party hereto actually prepared, drafted or requested any term or condition of this Agreement.

Section 6.10 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

(*The next page is the signature page*)

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

THE ONE GROUP HOSPITALITY, INC.

By:_____
Name:
Title:

HPC III KAIZEN LP

By: HILL PATH CAPITAL PARTNERS III GP LLC, its General Partner

By: _____
Name:
Title:

HPS INVESTMENT PARTNERS, LLC

By:_____
Name:
Title:

EXHIBIT A
DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

" **Affiliate**" of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person.

" **Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined under Rule 405.

"**Business Day**" means a day that is not a Saturday or Sunday or a day on which banks in New York City are authorized or requested by law to close.

" **Commission**" means the Securities and Exchange Commission.

" **Common Stock**" means the Company's common stock, par value $0.0001 per share.

" **Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Hill Path Holder**" means (a) any Hill Path Holder holding Registrable Securities and (b) any transferee to which the rights under this Agreement have been transferred in accordance with Section 5.1.

" **Holder**" means (a) any Investor holding Registrable Securities and (b) any transferee to which the rights under this Agreement have been transferred in accordance with Section 5.1.

" **Person**" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, other legal entity, or any government or governmental agency or authority.

"**register**," "**registered**" and "**registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

" **Registrable Securities**" means (a) any Warrants, (b) any shares of Common Stock issued or issuable upon exercise of the Warrants, and (c) any other securities actually issued in respect of the securities described in clause (a) above or this clause (c) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a) through (c) above shall only be treated as Registrable Securities until the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective Registration Statement relating thereto; (ii) the date on which both (A) such security becomes eligible for sale pursuant to Rule 144 without volume or manner-of-sale restrictions and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1) and (B) the Holder holds less than 1% of the fully diluted outstanding Common Stock (which for confirmation excludes shares of Common Stock reserved for, but not issued, under an equity incentive plan of the Company); or (iii) the date on which such security is transferred in a transaction pursuant to which the registration rights are not also assigned in accordance with Section 5.1.

" **Registration Expenses**" means (a) all expenses incurred by the Company in complying with this Agreement, including, without limitation, internal expenses, all registration, qualification, listing and filing fees, printing expenses, escrow fees, rating agency fees, fees and disbursements of the Company's independent registered public accounting firm, fees and disbursements of counsel for the Company, blue sky fees and expenses, (b) the documented and reasonable fees and expenses of one counsel to the Holders in connection with this Agreement and (c) the fees and expenses of counsel for the underwriters (or any placement agent, as the case may be) and any qualified independent underwriter in connection with FINRA and blue sky qualifications; provided, however, that Registration Expenses shall not include any Selling Expenses.

" **Restricted Securities**" means any Common Stock required to bear the legend set forth in Section 5.08(a) of the Investment Agreement.

" **Rule 144**" means Rule 144 promulgated under the Securities Act and any successor provision.

" **Rule 405**" means Rule 405 promulgated under the Securities Act and any successor provision.

" **Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

" **Selling Expenses**" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders.

" **Shelf Registration**" means the Resale Shelf Registration or a Subsequent Shelf Registration, as applicable.

"**Transfer**" has the meaning given to such term in the Investment Agreement.

" **WKSI**" means a "well known seasoned issuer" as defined under Rule 405.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

Term	Section
Agreement	Preamble
Applicable Matters	Section 6.2(b)
Chosen Court	Section 6.2(b)
Company	Preamble
Company Indemnified Parties	Section 4.1
Effectiveness Period	Section 1.2
Electronic Signatures	Section 6.1
Hill Path Investor	Preamble
Holder Indemnified Parties	Section 4.2
HPS Investor	Preamble
Indemnified Party	Section 4.3
Indemnifying Party	Section 4.3
Investors	Preamble
Marketed Underwritten Offering	Section 1.6

The ONE Group Hospitality, Inc. to Acquire Owner of Benihana

Creates a scaled platform and further enables The ONE Group to diversify and strengthen its industry leading portfolio of world-class, experiential restaurant concepts

Transaction adds $514 million in trailing twelve months revenue and significant incremental annualized EBITDA

Combined business will generate meaningful free cash flow enabling debt reduction and shareholder friendly capital allocation to drive long-term value for shareholders

Expected to be accretive to diluted earnings per share

Conference call and webcast to discuss the transaction to be held later today at 5:00 PM ET on Tuesday, March 26th

DENVER - March 26, 2024 – The ONE Group Hospitality, Inc. ("The ONE Group" or the "Company") (Nasdaq: STKS), today announced it will acquire Safflower Holdings Corp., the owner of Benihana Inc. ("Benihana"), a leading operator of highly differentiated experiential brands that owns the only national teppanyaki brand in the U.S. and owns RA Sushi.

The transaction is valued at $365 million and will be financed with $160 million in preferred equity and a portion of a new $390 million term loan and credit facility. Upon closing of the transaction, which is expected by the end of the second quarter of 2024, The ONE Group will have a global footprint of 168 venues, across full-service entertainment and grill restaurants across its four distinctive experiential, and complementary brands.

Founded in 1964, Benihana has a tremendous legacy in the U.S. as it pioneered two unique, complementary restaurant brands focusing on providing high-quality food and unparalleled guest service. Its flagship brand, BENIHANA®, is a category-defining brand and American cultural icon that pioneered interactive teppanyaki dining in the U.S. Benihana's RA SUSHI® predicates itself on delivering creative sushi and Japanese dishes in a bar-forward, upbeat, and vibrant dining atmosphere and fun-filled, high-energy environment.

Currently Benihana operates 88 company-owned restaurants and franchises or licenses an additional 17 venues in the Americas. Once closed, the acquisition is expected to add approximately $575 million in annualized system-wide revenue and approximately $70 million in annual run-rate EBITDA before synergies, which are estimated to be $20 million annually. The Company expects that it will take 24 months to realize synergies post-closing. This is expected to bring the Company's pro forma annualized run-rate EBITDA with synergies to more than $135 million. The transaction is expected to be immediately accretive to earnings per diluted share.

"We are delighted to welcome Benihana, an American cultural icon with timeless appeal that transcends generations and offers unparalleled guest experiences, to The ONE Group family," said Emanuel "Manny" Hilario, President and CEO of The ONE Group. "The strategic acquisition of a one-of-a-kind restaurant platform with a compelling financial profile supports our broader strategy to fortify and diversify our leading portfolio of best-in-class experiential VIBE restaurant concepts. With Benihana joining The

ONE Group's platform, our combined annualized EBITDA enhances our ability to continue to fully fund our expansion while delivering meaningful free cash flow enabling debt reduction and shareholder friendly capital allocation to drive long-term value for shareholders."

Additional Estimates

$ in Millions		BEFORE	AFTER	CHANGE
Capitalization	• Cash	$21	$55	$34
	• Debt	$74	$350	$276
	• Net Debt	$53	$295	$242
	• Preferred Equity	$0	$160	$160
	• Share Count	31.3	33.0	1.7
Financial	• Venue Count	63	168	105
	• TTM System-wide Revenue	$436	$1,039	$603
	• TTM GAAP Revenue	$333	$847	$514
	• TTM Adjusted EBITDA	$40	$105	$65
	• TTM Run-rate EBITDA	$47	$117	$70
	• Projected Synergies	$0	$20	$20
	• TTM Run-rate EBITDA with Synergies	47	$137	$90

*Benihana's TTM financial measures represent the 364 days ending December 31, 2023, and they are unaudited.
**Company expects that it will take 24 months to realize synergies post-closing.
***After reflects addition of the Company's capitalization and financial results and estimated capitalization impacts of the transactions and Benihana's standalone TTM financial results, without giving effect to any pro forma or other adjustments.

Transaction Overview and Timing

The transaction, valued at $365 million, will be financed with a portion of a new $390 million term loan and credit facility and $160 million in preferred equity. The preferred equity will be primarily issued to Hill Path Capital and, upon closing of the transaction, Scott Ross (Founder and Managing Partner of Hill Path Capital) and James Chambers (Co-Founder and Partner of Hill Path Capital) will join the Company's board of directors. The combined business will generate meaningful free cash flow enabling debt reduction and shareholder friendly capital allocation to drive long-term value for shareholders.

Please refer to the accompanying slides for additional detail which have been posted to the Investor Relations tab of The ONE Group's website at http://www.togrp.com/ under "News / Events."

Closing is expected by the end of the second quarter of 2024. The transaction has been approved by both boards of directors and is subject to customary closing conditions.

Deutsche Bank Securities Inc. served as sole financial advisor to The ONE Group and lead arranger for the term loan and credit facility. Stoel Rives LLP served as legal advisor to The ONE Group. Piper Sandler & Co served as financial advisor to Benihana. Sidley Austin LLP and Akin Gump Strauss Hauer & Feld LLP served as legal advisors to Benihana.

Transaction Conference Call and Webcast

Emanuel "Manny" Hilario, President and CEO, and Tyler Loy, CFO, will host a conference call and webcast on Tuesday at 5:00 PM Eastern Time.

The conference call can be accessed live over the phone by dialing 201-689-8573. A replay will be available after the call and can be accessed by dialing 412-317-6671; the passcode is 13745324.

The webcast can be accessed from the Investor Relations tab of The ONE Group's website at http://www.togrp.com/ under "Presentations."

About The ONE Group

The ONE Group Hospitality, Inc. (NASDAQ: STKS) is an international restaurant company that develops and operates upscale and polished casual, high-energy restaurants and lounges and provides hospitality management services for hotels, casinos, and other high-end venues both domestically and internationally. The ONE Group's focus is to be the global leader in VIBE dining, and its primary restaurant brands and operations are:

- STK, a modern twist on the American steakhouse concept with 28 restaurants in major metropolitan cities in the U.S., Europe, and the Middle East, featuring premium steaks, seafood, and specialty cocktails in an energetic upscale atmosphere.
- Kona Grill, a polished casual, bar-centric grill concept with 27 restaurants in the U.S., featuring American favorites, award-winning sushi, and specialty cocktails in an upscale casual atmosphere.
- ONE Hospitality, The ONE Group's food and beverage hospitality services business, develops, manages, and operates premier restaurants and turnkey food and beverage services within high-end hotels and casinos currently operating 8 venues in the U.S. and Europe.

Benihana Inc.

Benihana, through its subsidiaries, is the nation's leading operator of Japanese teppanyaki and sushi restaurants with more than 100 restaurants operating under the brands BENIHANA® and RA SUSHI®, including franchised Benihana restaurants in the United States, the Caribbean, Central America, and South America. Additional information about Benihana can be found at www.benihana.com.

Forward Looking Statements

This press release includes "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States Private Securities Litigation Reform Act of 1995, including with respect to restaurant openings, run-rate adjustments, certain financial results and expected synergies. Forward-looking statements may be identified by the use of words such as "target," "intend," "anticipate," "believe," "expect," "estimate," "plan," "outlook," and "project" and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. A number of factors could cause actual results or outcomes to differ materially from those indicated by such forward-looking statements, including but not limited to: (1) our ability to integrate the new restaurants into our operations without disruptions to operations; (2) our ability to capture anticipated synergies; (3) our ability to open new restaurants and food and beverage locations in current and additional markets, grow and manage growth profitably, maintain relationships with suppliers and obtain adequate supply of products and retain employees; (4) factors beyond our control that affect the number and timing of new restaurant openings, including weather conditions and factors under the control of landlords, contractors and regulatory and/or licensing authorities; (5) our ability to successfully improve performance and cost, realize the benefits of our marketing efforts and achieve improved results as we focus on developing new management and license deals; (6) changes in applicable laws or regulations; (7) the possibility that The ONE Group may be adversely affected by other economic, business, and/or competitive factors; (8) the risk that the acquisition does not close; and (9) other risks and uncertainties indicated from time to time in our filings with the Securities and Exchange Commission, including our Annual Report on Form 10-K filed for the year ended December 31, 2023 and Quarterly Reports on Form 10-Q.

Investors are referred to the most recent reports filed with the Securities and Exchange Commission by The ONE Group Hospitality, Inc. Investors are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made, and we undertake no obligation to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise.

Reconciliation of Non-GAAP Financial Measures

	2023 and TTM Financials (1)	
	The ONE Group	Benihana
Net Income	$4.0	$5.8
Income Taxes	(1.8)	2.6
Interest Expense	7.0	34.2
D&A Expense	15.7	17.1
Pre-opening Expense	8.9	2.3
Stock-based Compensation	5.0	0.0
Other Addbacks (2)	1.3	3.2
Adjusted EBITDA	$40.1	$65.2

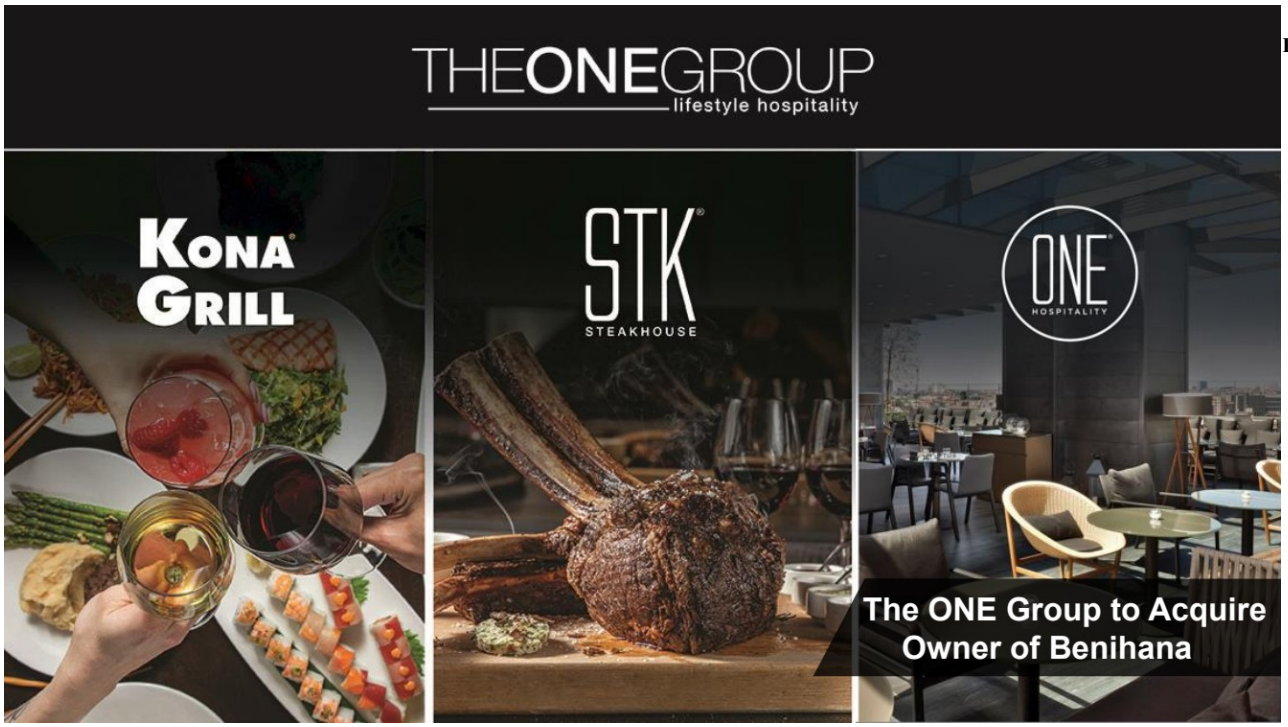
(1) Benihana's TTM financial measures represent the 364 days ending December 31, 2023, and they are unaudited.
(2) Other addbacks include non-cash expenses, transaction expenses, one-time litigation, and other miscellaneous one-time items. For other information please refer to the Company's 10-K filed for the year ended December 31, 2023.

Contacts:

Investors:
ICR
Michelle Michalski or Raphael Gross
(646) 277-1224
Michelle.Michalski@icrinc.com

Media:
ICR
Liz DiTrapano
(203) 682-4716
liz.ditrapano@icrinc.com

Exhibit 99.2


THEONEGROUP
lifestyle hospitality
KONA GRILL
STK
STEAKHOUSE
ONE
HOSPITALITY
The ONE Group to Acquire
Owner of Benihana

Forward-looking Statements

Forward-Looking Statements

This presentation includes "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States Private Securities Litigation Reform Act of 1995, including with respect to restaurant openings, run-rate adjustments, certain financial results and expected synergies. Forward-looking statements may be identified by the use of words such as "target," "intend," "anticipate," "believe," "expect," "estimate," "plan," "outlook," and "project" and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. A number of factors could cause actual results or outcomes to differ materially from those indicated by such forward-looking statements, including but not limited to: (1) our ability to integrate the new restaurants into our operations without disruptions to operations; (2) our ability to capture anticipated synergies; (3) our ability to open new restaurants and food and beverage locations in current and additional markets, grow and manage growth profitably, maintain relationships with suppliers and obtain adequate supply of products and retain employees; (4) factors beyond our control that affect the number and timing of new restaurant openings, including weather conditions and factors under the control of landlords, contractors and regulatory and/or licensing authorities; (5) our ability to successfully improve performance and cost, realize the benefits of our marketing efforts and achieve improved results as we focus on developing new management and license deals; (6) changes in applicable laws or regulations; (7) the possibility that The ONE Group may be adversely affected by other economic, business, and/or competitive factors; (8) the risk that the acquisition does not close; and (9) other risks and uncertainties indicated from time to time in our filings with the Securities and Exchange Commission, including our Annual Report on Form 10-K filed for the year ended December 31, 2023 and Quarterly Reports on Form 10-Q.

Non-GAAP Financial Measures

This presentation contains non-GAAP financial measures. A "non-GAAP financial measure" is a numerical measure of a company's financial performance that excludes or includes amounts from a measure calculated and presented in accordance with GAAP in the consolidated statements of operations, balance sheets or statements of cash flows of the Company. These measures are presented because management uses this information to monitor and evaluate financial results and trends and believes this information to also be useful for investors. The Company has both wholly owned and partially owned subsidiaries. Same store sales represent total U.S. food and beverage sales at owned and managed units opened for at least a full 18-months. This measure includes total revenue from our owned and managed locations.Total food and beverage sales at owned and managed units represents total revenue from owned operations as well as the sales reported to the Company by the owners of locations the Company manages, where it earns management and incentive fees. EBITDA is defined as net income before interest expense, provision for income taxes and depreciation and amortization. Adjusted EBITDA represents net income before interest expense, provision for income taxes, depreciation and amortization, non-cash impairment loss, non-cash rent, pre-opening expenses, non-recurring gains and losses and losses from discontinued operations. The disclosure of EBITDA and Adjusted EBITDA and other non-GAAP financial measures may not be comparable to similarly titled measures reported by other companies. EBITDA and Adjusted EBITDA should be considered in addition to, and not as a substitute for, or superior to, net income, operating income, cash flows, revenue, or other measures of financial performance prepared in accordance with GAAP. For a reconciliation of total food and beverage sales at owned and managed units, EBITDA, and Adjusted EBITDA to the most directly comparable financial measures presented in accordance with GAAP and a discussion of why we consider them useful, see the Company's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the year ended December 31, 2023.

VISION

The Undisputed Global Leader in *VIBE* Dining

MISSION

To be the *BEST* Restaurant In Every Market That We Operate by Delivering Exceptional and Unforgettable Guest Experiences to Every Guest, Every Time.

ABOUT US

We are an international restaurant company that develops and operates upscale and polished-casual, high-energy restaurants and turn-key food & beverage services for hospitality venues including hotels, casinos and other high-end locations. We drive revenue and profits for our stakeholders and partners, who are leading entertainment and hospitality companies, including Disney, Hyatt and Melia Hotels.

THEONEGROUP lifestyle hospitality

The Global Leader in ***VIBE*** Dining

STK

SALT WATER SOCIAL

Bao Yum

BENIHANA

KONA GRILL

RA Sushi • Bar • Restaurant

VIBE DINING – Unforgettable, Energetic, Fun and Entertaining
Created by the Flawless Execution of the Seven Fundamentals!

Strategic Fit

- The ONE Group Hospitality, Inc. is acquiring Safflower Holdings Corp., the owner of Benihana Inc. ("Benihana"), a leading operator of highly differentiated experiential brands that owns the only national teppanyaki brand in the U.S. and owns RA Sushi
- Combines top entertainment brands in the industry and aligns with our vision of the Company being the undisputed global leader in VIBE dining
- Sizable and meaningful publicly traded company after transaction
  - Creates a scaled platform and further enables The ONE Group to diversify and strengthen its industry leading portfolio of world-class, experiential restaurant concept
- Leverages existing franchise platform for additional asset-light development opportunities
- Generates significant synergies
- Retail & CPG presence for Benihana is significant
- Kona Grill and RA Sushi combined becomes a sizable and relevant grill business
- Provides compelling economics for shareholders both near and long-term
  - Combined business will generate meaningful free cash flow enabling debt reduction and shareholder friendly capital allocation
- Expected to be accretive to diluted earnings per share

Footprint – 168 Venues Internationally and Growing

Full-Service Entertainment Restaurants (114)

28 International
~$350MM System-wide Revenue Brand

86 Americas
~$500MM System-wide Revenue Brand

Grill Restaurants (46)

27 Domestic
~$150MM System-wide Revenue Brand

19 Domestic
~$80MM System-wide Revenue Brand

One Hospitality F&B (8)

Hospitality Services

Hospitality Services

Hospitality Services

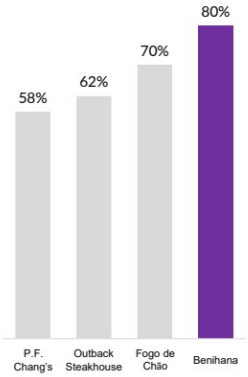
London, UK (1)

Benihana: An Iconic Pioneer in Entertainment Dining with Far Reaching Press

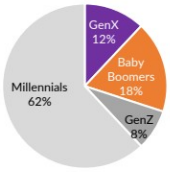
Benihana: One-of-a-Kind, Celebratory Experience Drives Strong Brand Advocacy

MOMENTS WORTH CELEBRATING + **TIMELESS APPEAL TRANSCENDS GENERATIONS** + **CREATING GREAT GUEST MEMORIES!!** = **STRONG BRAND ADVOCACY**

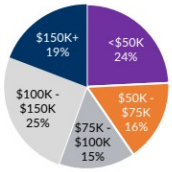
#1 Fun Place to Go



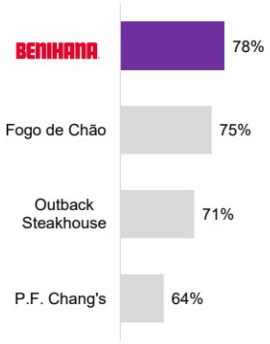
Generation



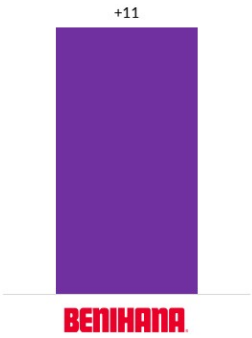
HH Income



Overall Guest Satisfaction



Net Promotor Score (1)
(Represents NPS "Gap" vs. Full-Service Average)



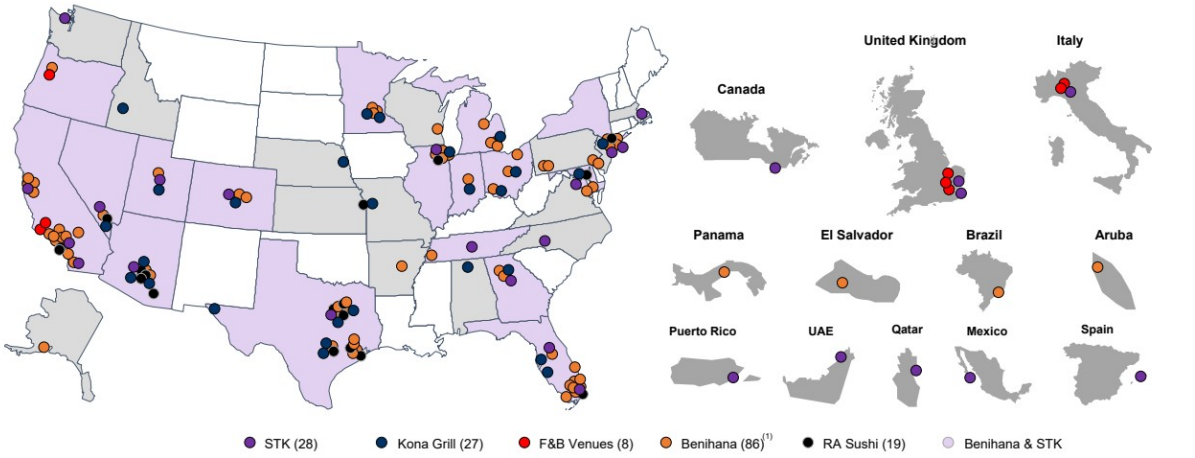
Source: 2022 Beall Research Report
(1) How likely are you to recommend the following restaurants to a friend or colleague (1-10)? NPS calculated by subtracting detractors (% 1-6) from promoters (% 9-10) and multiplying by 100

The Undisputed Global Leader in VIBE Dining

THEONEGROUP	VIBE DINING	BENIHANA
✓	Iconic & Highly Differentiated Experiential Brands	✓
✓	High Quality, Flavorful and Craveable Menu	✓
✓	World Class Bar Program	✓
✓	Memorable Hospitality & Exceptional Service	✓
✓	Fun, Vibrant & Energizing Environment	✓

Proven & Scalable Global Platform with Compelling Whitespace

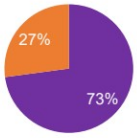
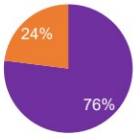
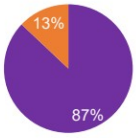
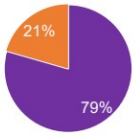
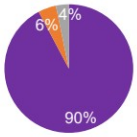
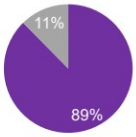
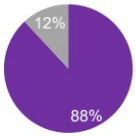
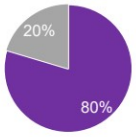
168 Total Venues Across 32 States and 12 Countries



(1) Comprised of 69 Company-owned and 8 U.S. and 4 international franchise restaurants and includes 5 Co-Branded Arenas/ Stadiums

THEONEGROUP lifestyle hospitality

Highly Complementary Brands that Diversify the Portfolio and Guest Base

	STK STEAKHOUSE	KONA GRILL	BENIHANA	RA
Proof of Concept: *(Number of Years)*	19+ Years	24+ Years	55+ Years	26+ Years
Real Estate Flexibility: *(Targeted Square Feet)*	8,000-10,000 sq. ft.	7,000-8,000 sq. ft.	8,000 sq. ft.	5,000 sq. ft.
Distinct Dining Occasions: *(Per Person Average Check)*	$130	$37	$46	$31
Menu Mix: Food Mix / Beverage Mix				
Channel Mix: A La Carte / Event Sales / Takeout / Delivery				
Powerful Unit Level Economics: *(Average Unit Volume, $mm)*	$17.3	$5.2	$6.5	$4.0

Note: Benihana and RA Sushi results as of FY 2023

Note: Per person average check for Kona Grill is calculated by taking the average check size of $63 and dividing it by an estimate of 1.7 guests per check

Proven Acquisition & Integration Capabilities

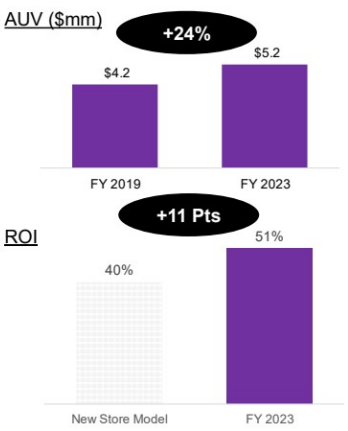
Existing Capabilities to Support Platform Acquisitions

- Best-in-Class Leadership Team
- Infrastructure Built to Deliver Consistent, Exceptional Service
- Leading Operating Model
- Robust R&D and Culinary Capabilities
- Investments in Employee Training & Development
- Digital Marketing Capabilities

High Impact Sales Drivers and Operational Improvements

- Focused menu reengineering
- Menu innovation around craveable food offerings
- Revived bar and patio program featuring live music
- Aggressive and sustained marketing activities
- Improved restaurant-level execution
- Access to robust social and digital marketing capabilities
- Suburban footprint

Driving Significant Performance Improvement at Kona Grill



Kona Grill Acquisition Created Significant Value

Note: Performance for 24 acquired restaurants

Core Values Supporting Our Strategy

Honesty * Integrity *** Fact Based *** Accountability**

Believe in the Power of ONE ("Pof1")

Change is the ONLY Constant

ONE Team – ONE Mission - ONE Goal

Strategic: Set Goals => Execute => Measure => Reward

The Core

Vision:	**The Undisputed Global Leader In *VIBE* Dining.**
Mission:	To be the *BEST* Restaurant In Every Market That We Operate by Delivering Exceptional and Unforgettable Guest Experiences to Every Guest, Every Time.

STRATEGY

PILLARS

Operations

- **Execution**: Best at Four Wall Execution - Best in Class at Guest Experience
- **Outreach**: Dominate the Four Blocks
- **Reservations**: Brilliant at Managing the Books
- **Delivery & Takeout**: Establish, Execute and Promote

Marketing

- **Holidays**: Celebrate and Convert
- **Digital**: Expand, Innovate and Win
- **Gift Cards**: Top of Mind Awareness - Advocate
- **Happy Hour**: Build a Value and Entry-Level Layer / Convert to Dinner

Culinary

- **Craveable**: Flavorful and Memorable- Have to Have it Again
- **Instagramable**: Visually or Physically Engaging
- **Easy to Execute**: Consistent and Operations Friendly
- **Newsworthy**: Innovative / Seasonal

Transaction Summary

Consideration	• $365 million enterprise value, paid in cash
Transaction Multiple	• 5.2x FY 2023 Benihana Run Rate Adj. EBITDA of ~$70 million • 4.1x FY 2023 Benihana Run Rate Adj. EBITDA of ~$90 million with expected synergies
Synergies	• Expect to achieve up to $20.0 million in annual synergies (over two years) • $10.0 to $15.0 million expected in one-time integration costs

Capital Structure	• Funded with new debt financing arranged by Deutsche Bank for $390 million, comprised of $350 million term loan B and $40 million revolving credit facility (expected to be undrawn at close)
	  ◦ No financial covenants on the term loan
	  ◦ Low amortization
	  ◦ 2.2x Leverage (1)
	  ◦ SOFR + 650 for the senior term loan
	  ◦ SOFR + 600 with step downs for the revolver
	• Funded with new preferred equity from Hill Path Capital for $160 million (2)
	  ◦ PIK interest initially 13%
	• Nearly $100 million in estimated excess liquidity at close

Conditions	• Subject to customary regulatory approvals

(1) Net Debt / TTM Run-rate EBITDA with Synergies = $295 million / $137 million
(2) Hill Path Capital will be issued the majority of the preferred equity

Additional Estimates

$ in Millions		THEONEGROUP BEFORE	THEONEGROUP AFTER	THEONEGROUP CHANGE
Capitalization	• Cash	$21	$55	$34
	• Debt	$74	$350	$276
	• Net Debt	$53	$295	$242
	• Preferred Equity	$0	$160	$160
	• Share Count	31.3	33.0	1.7
Financial	• Venue Count	63	168	105
	• TTM System-wide Revenue	$436	$1,039	$603
	• TTM GAAP Revenue	$333	$847	$514
	• TTM Adjusted EBITDA	$40	$105	$65
	• TTM Run-rate EBITDA	$47	$117	$70
	• Projected Synergies	$0	$20	$20
	• TTM Run-rate EBITDA with Synergies	$47	$137	$90

*Benihana's TTM financial measures represent the 364 days ending December 31, 2023, and they are unaudited
**Company expects that it will take 24 months to realize synergies post-closing.
***After reflects addition of the Company's capitalization and financial results and estimated capitalization impacts of the transactions and Benihana's standalone TTM financial results, without giving effect to any pro forma or other adjustments.

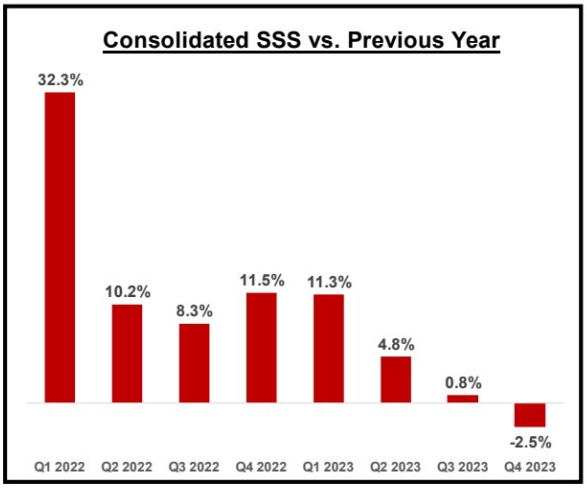
Expected Sources and Uses of Cash

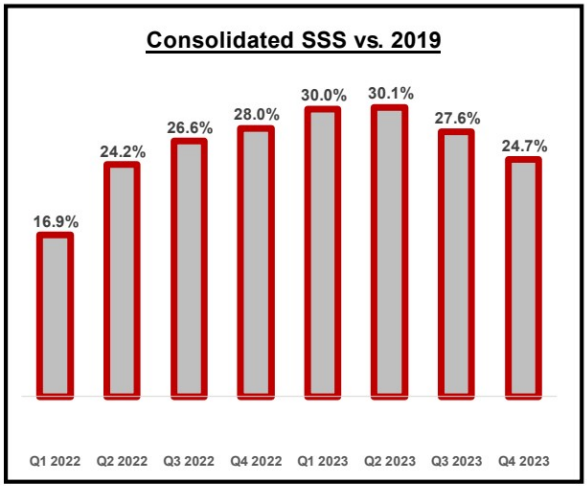
Sources	
New Term Loan (Net of OID)	$338.3
Preferred Equity (Net of OID)	152.0
Total Sources	$490.3

Uses	
Purchase Price	$365.0
Paydown of Existing Debt	76.2
Transaction Expenses	15.0
Cash to Balance Sheet	34.1
Total Uses	$490.3

Benihana Consolidated SSS Trailing Eight Quarters

BENIHANA





Path to Five Billion (1)

(1) System-wide revenue

Long-Term Growth Targets*

- 3-5 annual STK unit growth
- 3-5 annual Kona Grill unit growth
- 3-5 annual Benihana unit growth
- 1-3 new F&B Hospitality managed deal

+

- Same store sales growth of 3% - 5%

- Focus on capital light
- Disciplined G&A management

+

- Maintain strong restaurant-level EBITDA margins
- Benefit from economies of scale and operating efficiencies

15%+ Consistent Adjusted EBITDA Growth

The ONE Group Highlights

Reconciliation of Non-GAAP Financial Measures

	2023 and TTM Financials[1]	
	The ONE Group	Benihana
Net Income	$4.0	$5.8
Income Taxes	(1.8)	2.6
Interest Expense	7.0	34.2
D&A Expense	15.7	17.1
Pre-opening Expense	8.9	2.3
Stock-based Compensation	5.0	0.0
Other Addbacks[2]	$1.3	3.2
Adjusted EBITDA	$40.1	$65.2

(1) Benihana's TTM financial measures represent the 364 days ending December 31, 2023, and they are unaudited
(2) Other addbacks include non-cash expenses, transaction expenses, one-time litigation and other miscellaneous one-time items. For other information please refer to the Company's 10-K filed for the year ended December 31, 2023