

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

**Amendment No. 1
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Portillo's Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

5812
(Primary Standard Industrial
Classification Code Number)

87-1104304
(I.R.S. Employer
Identification Number)

2001 Spring Road, Suite 400
Oak Brook, IL 60523
(630) 954-3773

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

Michelle G. Hook
Chief Financial Officer
2001 Spring Road, Suite 400
Oak Brook, IL 60523
(630) 954-3773

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

Copies to:

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767 Fifth Avenue
New York, New York 10153
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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee
Class A common stock, \$0.01 par value per share	\$100,000,000	\$10,910.00 (3)

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) promulgated under the Securities Act of 1933, as amended.

(2) Includes shares of Class A common stock that may be issuable upon exercise of an option to purchase additional shares granted to the underwriters.

(3) The filing fee has been previously paid.

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

EXPLANATORY NOTE

Portillo's Inc. is filing this Amendment No. 1 to its Registration Statement on Form S-1 (File No. 333-259810) as an exhibits-only filing. Accordingly, this Amendment consists only of the facing page, this explanatory note, Item 16(a) of Part II of the Registration Statement, the signature page to the Registration Statement and the filed exhibits. The remainder of the Registration Statement is unchanged and has therefore been omitted.

Part II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
1.1**	Form of Underwriting Agreement.
3.1***	<u>Form of Amended and Restated Certificate of Incorporation of Portillo's Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.</u>
3.2***	<u>Form of Amended and Restated Bylaws of Portillo's Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.</u>
3.3*	<u>Certificate of Incorporation of Portillo's Inc., as currently in effect.</u>
3.4*	<u>Bylaws of Portillo's Inc., as currently in effect.</u>
4.1***	<u>Form of Certificate of Class A Common Stock.</u>
5.1*	<u>Opinion of Weil, Gotshal & Manges LLP.</u>
10.1(a)*	<u>First Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.1(b)*	<u>First Amendment to First Lien Credit Agreement, dated as of October 25, 2016, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.1(c)*	<u>Second Amendment to First Lien Credit Agreement, dated as of May 18, 2018, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.1(d)*	<u>Third Amendment to First Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.2(a)*	<u>Second Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.2(b)*	<u>First Amendment to Second Lien Credit Agreement, dated as of October 25, 2016, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.2(c)*	<u>Second Amendment to Second Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.</u>
10.3*	<u>2014 Equity Incentive Plan.</u>
10.4**	Portillo's Inc. 2021 Equity Incentive Plan.
10.5(a)***	<u>Form of Time Option Award Agreement under 2014 Equity Incentive Plan.</u>
10.5(b)***	<u>Form of Performance Option Award Agreement under 2014 Equity Incentive Plan.</u>
10.5(c)***	<u>Form of Time Option Award Agreement under 2014 Equity Incentive Plan (Independent Directors).</u>

<u>Exhibit No.</u>	<u>Description</u>
10.5(d)***	Form of Performance Option Award Agreement under 2014 Equity Incentive Plan (Independent Directors).
10.6**	Form of equity award agreement under Portillo's Inc. 2021 Equity Incentive Plan.
10.7**	Form of 2021 Executive Officer and Director Indemnification Agreement for Portillo's Inc.
10.8*	Employment Agreement between PHD Group Holdings LLC and Michael Osanloo, entered into as of August 3, 2018.
10.9*	Employment Agreement between PHD Group Holdings LLC and Sherri Abruscato, entered into as of August 1, 2014.
10.10*	Letter Agreement between PHD Group Holdings LLC and Michelle Hook entered into as of November 14, 2020.
10.11*	Letter Agreement between PHD Group Holdings LLC and Jill Waite entered into as of May 22, 2019.
10.12**	Form of Tax Receivable Agreement among Portillo's Inc. and the TRA Parties
10.13***	Form of Amended LLC Agreement
10.14***	Form of Registration Rights Agreement
21.1*	List of subsidiaries
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for PHD Group Holdings LLC and subsidiaries
23.2*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for Portillo's Inc.
23.3*	Consent of Weil, Gotshal & Manges LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page).

* Previously filed.

** To be filed by amendment.

*** Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Oak Brook, State of Illinois, on September 28, 2021.

PORTILLO'S INC.

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer and Treasurer

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on September 28, 2021.

<u>Signature</u>	<u>Title</u>
<u>/s/ Michael Osanloo</u> Michael Osanloo	President, Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Michelle Hook</u> Michelle Hook	Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)
<u>*</u> Ann Bordelon	Director
<u>*</u> Noah Glass	Director
<u>*</u> Gerard J. Hart	Director
<u>*</u> Richard K. Lubin	Director

Signature

Title

*

Joshua A. Lutzker

Director

*

Michael A. Miles, Jr.

Director

*By: /s/ Michelle Hook

Name: Michelle Hook

Title: Attorney-in-fact

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

of

PORTILLO'S INC.

(Pursuant to Section 242 and 245 of
the General Corporation Law of the State of Delaware)

Portillo's Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is Portillo's Inc. The date of filing of its original certificate of incorporation with the Secretary of State of the State of Delaware was June 8, 2021 (the "Previous Certificate of Incorporation") under the name Portillo's Inc.

SECOND: The Board of Directors of the Corporation (the "Board") adopted resolutions proposing to amend and restate the Previous Certificate of Incorporation, and the sole stockholder of the Corporation has duly approved the amendment and restatement by written consent pursuant to and in accordance with Section 228 of the DGCL.

THIRD: This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (as from time to time in effect, the "DGCL").

FOURTH: This Certificate of Incorporation restated, integrates and further amends in its entirety the Previous Certificate of Incorporation to read as follows:

1. Name. The name of the Corporation is Portillo's Inc.
2. Address; Registered Office and Agent. The address of the Corporation's registered office in the State of Delaware is c/o the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle and the name of its registered agent at such address is the Corporation Trust Company.
3. Purposes. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.
4. Number of Shares.

4.1 The total number of shares of all classes of stock that the Corporation shall have authority to issue is _____ shares, consisting of three classes as follows: (i) _____ shares of Class A common stock, with the par value of \$0.01 per share (the "Class A Common Stock"); (ii) _____ shares of Class B common stock, with the par value of \$0.00001 per share (the "Class B Common Stock") and, together with Class A Common Stock, the "Common Stock"; and (iii) _____ shares of preferred stock, with the par value of \$0.01 per share (the "Preferred Stock"). Effective upon the

effectiveness of the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Reclassification Effective Time"), each share of common stock, par value \$0.01 per share (the "Old Common Stock"), issued and outstanding immediately prior to the Reclassification Effective Time, shall automatically, without further action on the part of the Corporation or any holder of such Old Common Stock, be reclassified as and become one (1) validly issued, fully paid and non-assessable share of Class A Common Stock.

4.2 Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, the number of authorized shares of any class of the Common Stock or the Preferred Stock may be increased or decreased, in each case by the affirmative vote of the holders of a majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL, and no vote of the holders of any class of the Common Stock or the Preferred Stock voting separately as a class will be required therefor. Notwithstanding the immediately preceding sentence, the number of authorized shares of any particular class may not be decreased below the number of shares of such class then outstanding, plus:

(i) in the case of Class A Common Stock, the number of shares of Class A Common Stock issuable in connection with (x) the redemption or exchange of all outstanding LLC Units corresponding to shares of Class B Common Stock, pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC and (y) the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Class A Common Stock;

(ii) in the case of Class B Common Stock, the number of shares of Class B Common Stock issuable in connection with the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Class B Common Stock.

5. Classes of Shares. The designation, relative rights, preferences and limitations of the shares of each class of stock are as follows:

5.1 Common Stock.

(i) Voting Rights.

(1) Each holder of Class A Common Stock will be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and each holder of Class B Common Stock will be entitled to one vote for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, except that, (x) in each case, to the fullest extent permitted by law and subject to Section 5.1(i)(2), holders of shares of each class of Common Stock, as such, will have no voting power with respect to, and will not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of any outstanding Preferred Stock if the holders of such Preferred Stock are entitled to vote as a separate class thereon under this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or under DGCL and (y) holders of shares of Class B Common Stock shall have no vote per share of Class B Common Stock issued to such holder with respect to LLC Units and Corresponding Management Holdings Units that are unvested until such time as such LLC Units or Corresponding Management Holdings Units have vested.

(2) (a) The holders of the outstanding shares of Class A Common Stock shall be entitled to vote separately upon any amendment to this Certificate of Incorporation (including by merger, consolidation, reorganization or similar event) that would alter or change the powers, preferences or special rights of such class of Common Stock in a manner that is disproportionately adverse as compared to the Class B Common Stock and (b) the holders of the outstanding shares of Class B Common Stock shall be entitled to vote separately upon any amendment to this Certificate of Incorporation (including by merger, consolidation, reorganization or similar event) that would alter or change the powers, preferences or special rights of such class of Common Stock in a manner that is disproportionately adverse as compared to the Class A Common Stock, it being understood that any merger, consolidation or other combination transaction shall not be deemed an amendment hereof if such merger, consolidation or other combination transaction (x) constitutes a Disposition Event in which holders of Paired Interests are required to exchange LLC Units pursuant to Section 10.04(b) of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC in such Disposition Event and receive consideration in such Disposition Event in accordance with the terms of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC as in effect prior to such Disposition Event and (y) provides for payments under or in respect of the tax receivable or similar agreement entered by the Corporation from time to time with any holder of Common Stock and/or securities of PHD Group Holdings LLC to be made in connection with any such merger, consolidation or other combination transaction in accordance with the terms of such tax receivable or similar agreement as in effect prior to such merger, consolidation or other combination transaction.

(3) Except as otherwise required in this Certificate of Incorporation or by applicable law, the holders of Common Stock will vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with the holders of Preferred Stock).

(4) If at any time the ratio at which LLC Units are redeemable or exchangeable for shares of Class A Common Stock pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC is amended, the number of votes per corresponding share of Class B Common Stock to which holders of shares of Class B Common Stock are entitled pursuant to Section 5.1(i)(1) shall be automatically adjusted accordingly so that from and after such time, the aggregate number of votes that a holder of Class B Common Stock is entitled to vote with respect to all shares of Class B Common Stock held by such holder is equal to the number of share of Class A Common Stock subject to be redeemed or exchanged for all LLC Units held by such holder.

(ii) Dividends; Stock Splits or Combinations.

(1) Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference senior to or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends of cash, stock or property may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor, at the times and in the amounts as the Board in its discretion may determine.

(2) Except as provided in Section 5.1(ii)(3) with respect to stock dividends, dividends of cash, stock or property may not be declared or paid on shares of Class B Common Stock.

(3) In no event will any stock dividend, stock split, reverse stock split, combination of stock, reclassification or recapitalization be declared or made on any class of Common Stock (each, a “Stock Adjustment”) unless (a) a corresponding Stock Adjustment for all other classes of Common Stock not so adjusted at the time outstanding is made in the same proportion and the same manner and (b) the Stock Adjustment has been reflected in the same economically equivalent manner on all LLC Units. Stock dividends with respect to each class of Common Stock may only be paid with shares of stock of the same class of Common Stock.

(iii) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock are entitled, if any, the holders of all outstanding shares of Class A Common Stock will be entitled to receive the assets of the Corporation available for distribution ratably in proportion to the number of shares of Class A Common Stock. Without limiting the rights of the holders of Class B Common Stock to exchange their LLC Units for shares of Class A Common Stock in accordance with Section 10.01 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC (or for the consideration payable in respect of shares of Class A Common Stock in such voluntary or involuntary liquidation, dissolution or winding-up), the holders of shares of Class B Common Stock, as such, will not be entitled to receive, with respect to such shares, any assets of the Corporation in excess of the par value thereof in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

5.2 Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized, and with such powers, including voting powers, if any, and the designations, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, all as shall hereafter be stated and expressed in the resolution or resolutions providing for the designation and issue of such shares of Preferred Stock from time to time adopted by the Board pursuant to authority so to do which is hereby expressly vested in the Board. The powers, including voting powers, if any, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Each series of shares of Preferred Stock: (i) may have such voting rights or powers, full or limited, if any; (ii) may be subject to redemption at such time or times and at such prices, if any; (iii) may be entitled to receive dividends (which may be cumulative or noncumulative) at such rate or rates, on such conditions and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or series of stock, if any; (iv) may have such rights upon the voluntary or involuntary liquidation, winding-up or dissolution of, upon any distribution of the assets of, or in the event of any merger, sale or

consolidation of, the Corporation, if any; (v) may be made convertible into or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock of the Corporation (or any other securities of the Corporation or any other Person) at such price or prices or at such rates of exchange and with such adjustments, if any; (vi) may be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series in such amount or amounts, if any; (vii) may be entitled to the benefit of conditions and restrictions upon the creation of indebtedness of the Corporation or any subsidiary, upon the issue of any additional shares (including additional shares of such series or of any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Corporation or any subsidiary of, any outstanding shares of the Corporation, if any; (viii) may be subject to restrictions on transfer or registration of transfer, or on the amount of shares that may be owned by any Person or group of Persons; and (ix) may have such other relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, if any; all as shall be stated in said resolution or resolutions of the Board providing for the designation and issue of such shares of Preferred Stock.

6. Class B Common Stock.

6.1 Retirement of Class B Shares. No holder of Class B Common Stock may Transfer shares of Class B Common Stock to any Person unless such holder transfers a corresponding number of LLC Units to the same Person in accordance with the provisions of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC, as such agreement may be amended from time to time in accordance with the terms thereof. If any outstanding share of Class B Common Stock ceases to be held by a holder of an LLC Unit, such share shall automatically and without further action on the part of the Corporation or such holder be transferred to the Corporation for no consideration and retired and canceled.

6.2 Reservation of Shares of Class A Common Stock. The Corporation will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock, solely for the purpose of the issuance upon the redemption or exchange of LLC Units, the number of shares of Class A Common Stock that are issuable upon the redemption or exchange of all outstanding LLC Units held by holders of Paired Interests, pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC. The Corporation covenants that all the shares of Class A Common Stock that are issued upon the redemption or exchange of such Paired Interests will, upon issuance, be validly issued, fully paid and non-assessable.

6.3 Taxes. The issuance of shares of Class A Common Stock upon the exercise by holders of Paired Interests of their right under Section 10.01 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC to exchange their LLC Units or have their LLC Units redeemed will be made without charge to such holders for any transfer taxes, stamp taxes or duties or other similar tax in respect of the issuance; provided, however, that if any such shares of Class A Common Stock are to be issued in a name other than that of the then record holder of the LLC Units being redeemed or exchanged (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such holder), then such holder and/or the Person in whose name such shares are to be delivered, shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved in the issuance or shall establish to the reasonable satisfaction of the Corporation that the tax has been paid or is not payable.

6.4 Preemptive Rights. To the extent LLC Units are issued pursuant to the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC to anyone other than the Corporation or a wholly owned subsidiary of the Corporation (including pursuant to Section 9.02 (or any equivalent successor provision) of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC), an equivalent number of shares of Class B Common Stock (subject to adjustment as set forth herein) shall concurrently be issued to the same Person to which such LLC Units are issued.

7. Board of Directors.

7.1 Powers of the Board. Except as otherwise provided by the DGCL or this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by applicable law or by this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) or the By-laws of the Corporation (the "By-laws"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock).

7.2 Number of Directors. The total number of directors of the Corporation (the "Directors") constituting the Board shall be at least one, and subject to any rights of the holders of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances or otherwise, the total number of directors constituting the whole Board of Directors shall be determined from time to time exclusively by resolutions adopted by the Board of Directors.

7.3 Elections of Directors. Directors shall be elected annually at the annual meeting of stockholders which need not be by written ballot except to the extent provided in the By-laws.

7.4 Advance Notice. Advance notice of nominations for the election of Directors or proposals of other business to be considered by stockholders, made other than by the Board or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board or such committee shall have delegated such authority, shall be given in the manner provided in the By-laws. Without limiting the generality of the foregoing, the By-laws may require that such advance notice include such information as the Board may deem appropriate or useful.

7.5 Removal of Directors. Subject to the terms of any one or more series or classes of Preferred Stock, any Director who is elected to serve may be removed from office during such term, at any time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's outstanding shares of stock entitled to vote generally in the election of Directors, voting together as a single class, with or without cause.

7.6 Term. Directors shall hold office until the first annual meeting following their election and until the election and qualification of their respective successors in office or until such Director's earlier death, resignation or removal.

7.7 Director Elections by Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series or classes of Preferred Stock shall have the right, voting separately by series or class, to elect one or more Directors at an annual or special meeting of stockholders, the election, filling of vacancies, removal of Directors and other features of such one or more directorships shall be governed by the terms of such one or more series or classes of Preferred Stock to the extent permitted by law. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

8. Stockholder Action by Written Consent. Subject to the terms of any one or more series or classes of Preferred Stock, from and prior to the time that the Berkshire Sponsor and its Affiliates collectively beneficially own (as shall be determined in accordance with Rules 13d-3 and 13d-5 of the Exchange Act) less than 50% of the voting power of then outstanding shares of capital stock of the Corporation, any action required or permitted to be taken by the stockholders of the Corporation may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. For purposes of this Section, "Affiliates" shall have the meaning set forth in Section 18(b) below; provided, however, that for the purposes of this definition none of (i) the Corporation, its subsidiaries and any entities (including corporations, partnerships, limited liability companies or other Persons) in which the Corporation or its subsidiaries hold, directly or indirectly, an ownership interest, on the one hand, or (ii) the Berkshire Sponsor and its affiliates (excluding the Corporation, its subsidiaries or other entities described in clause (i)), on the other hand, shall be deemed to be "Affiliates" of one another.

9. Meetings of Stockholders.

9.1 An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held at such place, on such date, and at such time as shall be fixed exclusively by resolution of the Board or duly authorized committee thereof.

9.2 Subject to the terms of any one or more series or classes of Preferred Stock, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the Board, the Chairperson or the chief executive officer of the Corporation.

9.3 There shall be no cumulative voting in the election of directors. Unless and except to the extent that the By-laws shall so require, the election of the Directors need not be by written ballot.

9.4 Any meeting of stockholders may be postponed, rescheduled or canceled by action of the Board at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn or recess any meeting of stockholders without a vote of the stockholders, which powers may be delegated by the Board to the Chairperson in either such rules and regulations or pursuant to the By-laws.

9.5 Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-laws of the Corporation.

10. Business Combinations.

10.1 Section 203 of the DGCL. The Corporation shall not be governed by Section 203 of the DGCL, and the restrictions contained therein shall not apply to the Corporation.

10.2 Limitations on Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(i) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; or

(ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least eighty-five percent (85%) of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers of the Corporation and (2) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(iii) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

10.3 Exceptions to Prohibition on Interested Stockholder Transactions. The restrictions contained in this Section 10 shall not apply if:

(i) a stockholder becomes an interested stockholder inadvertently and (A) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (B) would not, at any time within the three- year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

(ii) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (A) constitutes one of the transactions described in the second sentence of this Section 10.3(ii); (B) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board; and (C) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 10.3(ii).

10.4 Section 10 Definitions. As used in this Section 10 only, and unless otherwise provided by the express terms of this Section 10, the following terms shall have the meanings ascribed to them as set forth in this Section 10.4 and, to the extent such terms are defined elsewhere in this Certificate of Incorporation, such definition shall not apply to this Section 10:

(i) “associate” when used to indicate a relationship with any Person, means: (1) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of voting stock; (2) any trust or other estate in which such Person has at least a twenty percent (20%) beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.

(ii) “business combination” when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation, Section 10.2 is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of the securities exercisable for, exchangeable for or convertible into stock of the Corporation or any subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this Section 10.4(ii)(3) shall there be an increase in the interested stockholder’s proportionate share of the stock of any class or series of the Corporation or the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in Sections 10.4(ii)(1) or 10.4(ii)(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iii) “control,” including the terms “controlling,” “controlled by” and “under common control with” 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 stock, by contract, or otherwise. A Person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such Person holds voting stock, in good faith and not for the purpose of circumventing this Section 10, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group (as such term is used in Rule 13d-5 under the Exchange Act, as such Rule is in effect as of the date of this Certificate of Incorporation) have control of such entity.

(iv) “interested stockholder” means any Person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such Person is an interested stockholder, and the affiliates and associates of such Person; provided, however, that the term “interested stockholder” shall in no case include or be deemed to include (1) the Investors or their direct and indirect transferees, or (2) any Person whose ownership of share in excess of the fifteen percent (15%) limitation set forth herein is the result of any action taken solely by the Corporation; provided that such Person specified in this clause (2) shall be an interested stockholder if thereafter such Person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such Person. For the purpose of determining whether a Person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include voting stock deemed to be owned by the Person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(v) “Investors” means the Berkshire Sponsor and any of its affiliates or successors or any group, or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, for so long as they collectively own, directly or indirectly, 5% or more of the voting power of the Corporation’s then outstanding shares of voting stock and of the Corporation, for so long as they collectively own, directly or indirectly, 5% or more of the voting power of the Corporation’s then outstanding shares of voting stock of the Corporation.

(vi) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a Person that individually or with or through any of its affiliates or associates:

(1) beneficially owns such stock, directly or indirectly; or

(2) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; provided, however, that a Person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the owner of any stock because of such Person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more Persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (b) of Section 10.4(vi)(2)), or disposing of such stock with any other Person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(vii) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(viii) "voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock in this Section 10 shall refer to such percentage of the votes of such voting stock.

11. Limitation of Liability of Directors. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended, no director of the Corporation shall have any personal liability to the Corporation or any of its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended hereafter to permit the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended, without further action by the Corporation. Any alteration, amendment, addition to or repeal of this Section 11, or adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) inconsistent with this Section 11, shall not reduce, eliminate or adversely affect any right or protection of a director of the Corporation existing at the time of such alteration, amendment, addition to, repeal or adoption with respect to acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

12. Indemnification and Advancement. The Corporation shall indemnify, advance expenses to and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any current or former director or officer of the Corporation ("Indemnitee") who was or is made or is threatened to be made a party or is otherwise involved in any "Proceeding," which shall include any threatened, pending or completed action, suit, arbitration,

mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any action (or failure to act) taken by him or her of any action (or failure to act) on his or her part while acting as a director or officer of the Corporation, or by reason of the fact that Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Section 12. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this Section 12. Neither any amendment nor repeal of this Section 12, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Section 12, shall eliminate or reduce the effect of this Section 12 in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption. This provision should be read in conjunction with Article VI of the Bylaws.

13. Amendment to the By-Laws. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board is expressly authorized and empowered to make, alter, amend, add to or repeal any and all By-laws by resolution of the Board of Directors. In addition to any vote required by this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) or applicable law, the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all By-laws of the Corporation or to adopt any provision inconsistent therewith.

14. Amendment. The Corporation reserves the right, at any time and from time to time, to alter, amend, add to or repeal any provision contained in this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) in any manner now or hereafter prescribed by the laws of the State of Delaware, and all rights, preferences, privileges and powers of any nature conferred upon stockholders, directors or any other Persons herein are granted subject to this reservation.

15. Exclusive Forum.

15.1 Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for: any (a) derivative action or proceeding brought on behalf of the Corporation; (b) action asserting a claim of breach of a fiduciary duty owed by or other wrongdoing by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (c) action asserting a claim arising under any provision of the DGCL or this

Certificate of Incorporation or the By-laws (as either may be amended from time to time), or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (d) action asserting a claim governed by the internal affairs doctrine. This Section 15.1 shall not apply in any respect to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the “Securities Act”), or the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated thereunder or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

15.2 Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder.

16. Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its Directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

17. Corporate Opportunity. To the fullest extent permitted by Section 122(17) of the DGCL and except as may be otherwise expressly agreed in writing by the Corporation, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities, which are from time to time presented to the Berkshire Sponsor or any of their respective managers, officers, directors, agents, stockholders, members, partners, affiliates and subsidiaries (other than the Corporation and its subsidiaries), even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and, to the fullest extent permitted by law, no such person or entity shall be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person or entity pursues or acquires such business opportunity, directs such business opportunity to another person or entity or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries unless, in the case of any such person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Corporation. Neither the alteration, amendment, addition to or repeal of this Section 17, nor the adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) inconsistent with this Section 17, shall eliminate or reduce the effect of this Section 17 in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Section 17, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

18. Definitions. As used in this Certificate of Incorporation, unless the context otherwise requires or as set forth in another Section of this Certificate of Incorporation, the term:

(a) "PHD Group Holdings LLC" means PHD Group Holdings LLC, a Delaware limited liability company or any successor thereto.

(b) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; provided, that (i) neither the Corporation nor any of its subsidiaries will be deemed an Affiliate of any stockholder of the Corporation or any of such stockholders' Affiliates and (ii) no stockholder of the Corporation will be deemed an Affiliate of any other stockholder of the Corporation, in each case, solely by reason of any investment in the Corporation.

(c) "Berkshire Sponsor" means Berkshire Partners LLC.

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

(e) "Director" is defined in Section 7.2.

(f) "Disposition Event" means any merger, consolidation or other business combination of the Corporation, whether effectuated through one transaction or series of related transactions (including a tender offer followed by a merger in which holders of Class A Common Stock receive the same consideration per share paid in the tender offer), unless, following such transaction, all or substantially all of the holders of the voting power of all outstanding classes of Common Stock and series of Preferred Stock that are generally entitled to vote in the election of Directors prior to such transaction or series of transactions, continue to hold a majority of the voting power of the surviving entity (or its direct or indirect parent) resulting from such transaction or series of transactions in substantially the same proportions as immediately prior to such transaction or series of transactions.

(g) "Enterprise" means the Corporation and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Corporation (or any of their wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary or employee.

(h) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor law or statute, together with the rules and regulations promulgated thereunder.

(i) “LLC Unit” means a nonvoting interest unit of PHD Group Holdings LLC.

(j) “Paired Interest” means one LLC Unit together with one share of Class B Common Stock, subject to adjustment pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC.

(k) “Permitted Transferee” means (i) in the case of any transferor that is not a natural person, any Person that is an Affiliate of such transferor and (ii) in the case of any transferor that is a natural person, (A) any Person to whom Common Stock is transferred from such transferor (1) by will or the laws of descent and distribution or (2) by gift without consideration of any kind; provided that, in the case of clause (2), such transferee is the spouse, the lineal descendant, sibling, parent, heir, executor, administrator, testamentary trustee, legatee or beneficiary of such transferor, (B) a trust that is for the exclusive benefit of such transferor or its Permitted Transferees under (A) above or (C) any institution qualified as tax-exempt under Section 501(c)(3) of the Code.

(l) “Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.

(m) “Second Amended and Restated LLC Agreement of PHD Group Holdings LLC” means the Second Amended and Restated Limited Liability Company Agreement, dated as of _____, 2021, by and among the Corporation, the other members of PHD Group Holdings LLC and the other Persons that may become parties thereto from time to time, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time.

(n) “Transfer” of a share of Class B Common Stock means, directly or indirectly, any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance of such share or any legal or beneficial interest in such share, in whole or in part, whether or not for value and whether voluntary or involuntary or by operation of law; provided, however, that the following shall not be considered a “Transfer”: (i) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with the Corporation and/or its stockholders that (x) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (y) either has a term not exceeding one (1) year or is terminable by the holder of the shares subject thereto at any time and (z) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner; (ii) entering into a customary voting or support agreement (with or without granting a proxy) in connection with any merger, consolidation or other combination transaction of the Corporation, whether effectuated through one transaction or series of related transactions (including a tender offer followed by a merger in which holders of Class A Common Stock receive the same consideration per share paid in the tender offer); (iii) the pledge of shares of capital stock of the Corporation by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction so long as such stockholder continues to exercise sole voting control over such pledged shares; provided, however, that a foreclosure on such shares or other similar action by the pledgee shall constitute a “Transfer”; or (iv) the fact that the spouse of any holder of Class B Common Stock possesses or obtains an interest in such holder’s shares of Class B Common Stock arising solely by reason of the application of the community property laws of any jurisdiction, so long as no other event or circumstance shall exist or have occurred that constitutes a “Transfer” of such shares of Class B Common Stock.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation of Portillo's Inc. has been duly executed by the officer below
this th day of , 2021.

By: _____
Name:
Title:

[Signature Page to Amended and Restated Certificate of Incorporation]

AMENDED AND RESTATED BYLAWS

OF

PORTILLO'S, INC.
(a Delaware corporation)

Effective , 2021

ARTICLE I

STOCKHOLDERS

Section 1.01. Annual Meetings. The annual meeting of the stockholders of Portillo's, Inc. (the "Corporation") for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors of the Corporation (the "Board of Directors" or "Board"), and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the General Corporation Law of the State of Delaware (the "DGCL"), and at such date and at such time as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice of the meeting.

Section 1.02. Special Meetings. Special meetings of the stockholders of the Corporation may be called as set forth in the Certificate of Incorporation of the Corporation. Any such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the DGCL, as shall be specified in the respective notice thereof.

Section 1.03. Stockholder Action by Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate of Incorporation") and in accordance with applicable law.

Section 1.04. Notice of Meetings; Waiver.

(a) Unless otherwise prescribed by statute or the Certificate of Incorporation of the Corporation, the Secretary of the Corporation or any Assistant Secretary shall cause notice of the place, if any, date and hour of each meeting of the stockholders, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, to be given personally by mail or by electronic transmission, or as otherwise provided in these Bylaws, not fewer than ten (10) nor more than sixty (60) days prior to the meeting, except as otherwise required by applicable law, the Certificate of Incorporation or these Bylaws.

(b) All such notices shall be delivered in writing or in any other manner permitted by the DGCL. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. If delivered by courier service, notice shall be deemed given at the earlier of when the notice is received or left at such stockholder's address as the same appears on the records of the Corporation. If given by electronic mail, notice shall be deemed given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL. Notice to stockholders may also be given by other forms of electronic transmission consented to by the stockholder. If given by facsimile telecommunication, such notice shall be deemed given when directed to a number at which the stockholder has consented to receive notice by facsimile. If given by a posting on an electronic network together with separate notice to the stockholder of such specific posting, such notice shall be deemed given upon the later of (x) such posting and (y) the giving of such separate notice. If notice is given by any other form of electronic transmission, such notice shall be deemed given when directed to the stockholder.

(c) Notwithstanding Section 1.04(b) of this Article I, a notice may not be given by electronic transmission (including email) from and after the time: (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation; and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these Bylaws, except as otherwise limited by applicable law, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such recipient through an automated process. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information.

(d) A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders need be specified in a written waiver of notice. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(e) If a stockholder meeting is to be held by means of remote communication and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present and vote at such meeting; and (ii) provide, or be accompanied by, the information required to access the stockholder list. A waiver of notice may be given by electronic transmission.

Section 1.05. Quorum. Except as otherwise required by law or by the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. Where a separate vote by one or more classes or series is required, the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote shall constitute a quorum entitled to take action with respect to that vote on that matter. Shares of the Corporation's capital stock shall neither be entitled to vote nor counted for quorum purposes if such shares belong to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation or (iii) any other entity, if a majority of the voting power of such other entity is otherwise controlled, directly or indirectly, by the Corporation; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.06. Voting.

(a) Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, directors shall be elected as set forth in Section 2.02 of these Bylaws. All other matters presented to the stockholders at a meeting at which a quorum is present shall, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation which are present in person or by proxy and entitled to vote thereon.

Section 1.07. Voting by Ballot. No vote of the stockholders on an election of directors or any other matter need be taken by written ballot or by electronic transmission unless otherwise provided in the Certificate of Incorporation or required by law.

Section 1.08. Postponement and Adjournment. Any meeting of stockholders may be postponed, rescheduled or cancelled by action of the Board of Directors at any time in advance of such meeting. If a quorum is not present at any meeting of the stockholders, the Chairperson of such meeting shall have the power to adjourn the meeting without a vote of the stockholders. In the absence of a quorum, the stockholders so present may, by the affirmative vote of the holders of a majority in voting power of the shares of the Corporation which are present in person or by proxy and entitled to vote thereon, adjourn the meeting from time to time until a quorum shall attend. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.09. Proxies. Any stockholder entitled to vote at any meeting of the stockholders may authorize another person or persons to vote at any such meeting and express such vote on behalf of such stockholder by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing such stockholder's signature to be affixed to such writing by any reasonable means including, but not limited to, by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. Such proxy must be filed with the Secretary of the Corporation before or at the time of the meeting at which such proxy will be voted. No such proxy shall be voted or acted upon after the expiration of three (3) years from the date of such proxy, unless such proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary of the Corporation either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Proxies by telegram, cablegram, or other electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the stockholder. Any copy or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.10. Organization; Procedure. At every meeting of stockholders, the Chairperson of such meeting shall be the Chairperson of the Board or, if no Chairperson of the Board has been elected or in the event of his or her absence or disability, a Chairperson chosen by the Board of Directors. The Secretary of the Corporation, or in the event of his or her absence or disability, an Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary of the Corporation, an appointee of the Chairperson of the meeting, shall act as Secretary of the meeting. The order of business and all other matters of procedure at every meeting of stockholders may be determined by the Chairperson of such meeting.

Section 1.11. Business at Annual and Special Meetings. No business may be transacted at an annual or special meeting of stockholders other than business that is:

- (a) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or a duly authorized committee thereof,
- (b) otherwise brought before the meeting by or at the direction of the Board of Directors or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board of Directors or such committee shall have delegated such authority, or
- (c) otherwise brought before the meeting by a "Record Holder" who complies with the notice procedures set forth in Section 1.12 of these Bylaws.

A "Record Holder" is a stockholder that holds of record stock of the Corporation entitled to vote at the meeting on the business (including any election of a director) to be appropriately conducted at the meeting. Clause (c) of this Section 1.11 shall be the exclusive means for a Record Holder to make director nominations or submit other business before a meeting of stockholders (other than proposals brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting, which proposals are not governed by these Bylaws). Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a stockholders' meeting except in accordance with the procedures set forth in Section 1.11 and Section 1.12 of these Bylaws.

Section 1.12. Notice of Stockholder Business and Nominations. In order for a Record Holder to properly bring any item of business before a meeting of stockholders, the Record Holder must give timely notice thereof in writing to the Secretary of the Corporation in compliance with the requirements of this Section 1.12. This Section 1.12 shall constitute an "advance notice provision" for annual meetings for purposes of Rule 14a-4(c)(1) under the Exchange Act.

(a) To be timely, a Record Holder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation:

- (i) in the case of an annual meeting of stockholders, not earlier than the open of business on the one-hundred twentieth (120th) day and not later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the open of business on the one-hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement by the Corporation of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation;

(ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the open of business on the one-hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the date on which notice of the date of the special meeting was made by the Corporation, mailed or public disclosure of the date of the special meeting was made, whichever first occurs; and

(iii) in no event shall any adjournment or postponement of an annual or special meeting, or the announcement thereof, commence a new time period (or extend the time period) for the giving of a stockholder's notice as described above.

(b) To be in proper form, whether in regard to a nominee for election to the Board of Directors or other business, a Record Holder's notice to the Secretary must:

(i) set forth, as to the Record Holder, the following information together with a representation as to the accuracy of the information:

(A) the name and address of the Record Holder as they appear on the Corporation's books (the "Holder");

(B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by the Holder or any Stockholder Associated Person of the Record Holder (except that such Holder or Stockholder Associated Person of the Record Holder shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Holder or Stockholder Associated Person of the Record Holder has a right to acquire beneficial ownership at any time in the future) and the date such ownership was acquired;

(C) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the price, value or volatility of any class or series of shares of the Corporation, whether or not the instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") that is directly or indirectly owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price, value or volatility of shares of the Corporation;

(D) any proxy, contract, arrangement, understanding or relationship pursuant to which the Holder or Stockholder Associated Person of the Record Holder has a right to vote or has granted a right to vote any shares of any security of the Corporation;

(E) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed to have a short interest in a security if the Holder or any Stockholder Associated Person of the Record Holder directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(F) any rights to dividends on the shares of any security of the Corporation owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder that are separated or separable from the underlying shares of the Corporation;

(G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which the Holder or any Stockholder Associated Person of the Record Holder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly beneficially owns an interest in the manager or managing member of a limited liability company or similar entity;

(H) any performance-related fees (other than an asset-based fee) that the Holder or any Stockholder Associated Person of the Record Holder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments or short interests, if any;

(I) any arrangements, rights, or other interests described in Sections 1.12(b)(i)(C)-(H) held by members of such Holder's immediate family sharing the same household;

(J) a representation that the Record Holder intends to appear in person or by proxy at the meeting to nominate the person(s) named or propose the business specified in the notice and whether or not such stockholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding shares required to approve the nomination(s) or the business proposed and/or otherwise to solicit proxies from stockholders in support of the nomination(s) or the business proposed;

(K) a certification regarding whether or not such Holder and any Stockholder Associated Person of the Record Holder have complied with all applicable federal, state and other legal requirements in connection with such Holder's and/or Stockholder Associated Persons' acquisition of shares or other securities of the Corporation and/or such Holder's and/or Stockholder Associated Persons' acts or omissions as a stockholder of the Corporation;

(L) any other information relating to the Holder and/or Stockholder Associated Person of the Record Holder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder; and

(M) any other information as reasonably requested by the Corporation.

Such information shall be provided as of the date of the notice and shall be supplemented by the Holder not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date.

(ii) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, the notice must set forth:

(A) a reasonably detailed description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration), the reasons for conducting such business at the meeting, and any material direct or indirect interest of the Holder or any Stockholder Associated Persons in such business; and

(B) a reasonably detailed description of all agreements, arrangements and understandings, direct and indirect, between the Holder, and any other person or persons (including their names) in connection with the proposal of such business by the Holder.

(iii) set forth, as to each person, if any, whom the Holder proposes to nominate for election or reelection to the Board of Directors:

(A) all information with respect to such proposed nominee that would be required to be set forth in a Record Holder's notice pursuant to this Section 1.12 if such proposed nominee were a Record Holder;

(B) all information relating to the nominee (including, without limitation, the nominee's name, age, business and residence address and principal occupation or employment and the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee) that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(C) a description of any agreements, arrangements and understandings between or among such stockholder or any Stockholder Associated Person, on the one hand, and any other persons (including any Stockholder Associated Person), on the other hand, in connection with the nomination of such person for election as a director; and

(D) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Holder and respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the Holder making the nomination or on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of Item 404 and the nominee were a director or executive officer of such registrant.

(iv) with respect to each nominee for election or reelection to the Board of Directors, the Record Holder shall include a completed and signed questionnaire, representation, and agreement required by Section 1.13 of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of the nominee. The number of nominees a Record Holder may nominate for election at an annual or special meeting (or in the case of Record Holder giving the notice on behalf of a beneficial owner, the number of nominees a Record Holder may nominate for election at the annual or special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual or special meeting.

(c) For purposes of these Bylaws:

(i) “public announcement” shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act and the rules and regulations thereunder;

(ii) “Stockholder Associated Person” means, with respect to any stockholder, (A) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (B) any person controlling, controlled by or under common control with any stockholder, or any Stockholder Associated Person identified in clause (A) above; and

(iii) “Affiliate” and “Associate” are defined by reference to Rule 12b-2 under the Exchange Act. An “affiliate” is any “person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.” “Control” is defined as the “possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” The term “associate” of a person means: (i) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten (10) percent or more of any class of equity securities, (ii) any trust or other estate in which such person has

a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(d) Only those persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors. Only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws, provided, however, that, once business has been properly brought before the meeting in accordance with Section 1.12, nothing in this Section 1.12(d) shall be deemed to preclude discussion by any stockholder of such business. If any information submitted pursuant to this Section 1.12 by any stockholder proposing a nominee(s) for election as a director at a meeting of stockholders is inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with Section 1.12. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the Chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in these Bylaws and, if he or she should determine that any proposed nomination or business is not in compliance with these Bylaws, he or she shall so declare to the meeting and any such nomination or business not properly brought before the meeting shall be disregarded or not be transacted.

(e) Notwithstanding the foregoing provisions of these Bylaws, a Record Holder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 1.11 or Section 1.12 of these Bylaws.

(f) Nothing in these Bylaws shall be deemed to (i) affect any rights of (A) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) the holders of any series of preferred stock, if any, if so provided under any applicable certificate of designation for such preferred stock or in the Certificate of Incorporation, or (ii) affect any rights of any holders of common stock pursuant to a stockholders' agreement with the Corporation existing on the date on which these Bylaws were adopted or impose any requirements, restrictions or limitations under Sections 1.11, 1.12 or 1.13 of these Bylaws unless expressly imposed by any such stockholders' agreement.

Section 1.13. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation by a Holder, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) that such person:

(a) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation, or

(ii) any Voting Commitment that could limit or interfere with the person’s ability to comply, if elected as a director of the Corporation, with the person’s fiduciary duties under applicable law,

(b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and

(c) in the person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

Section 1.14. Inspectors of Elections. Preceding any meeting of the stockholders, if required by law, the Board of Directors shall appoint one (1) or more persons to act as “inspectors” of elections, and may designate one (1) or more alternate inspectors. In the event no inspector or alternate is able to act, the Chairperson of such meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of an inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting, the authenticity, validity, and effect of proxies and ballots, and the existence of a quorum;

(c) specify the information relied upon to determine the validity of electronic transmissions in accordance with Section 1.09 of these Bylaws;

(d) count all votes and ballots;

(e) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(f) certify his or her determination of the number of shares represented at the meeting, and his or her count of all votes and ballots;

(g) appoint or retain other persons or entities to assist in the performance of the duties of inspector;

(h) when determining the shares represented and the validity of proxies and ballots, be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Section 1.09 of these Bylaws, ballots and the regular books and records of the Corporation. The inspector may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers or their nominees or a similar person which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspector considers other reliable information as outlined in this section, the inspector, at the time of his or her certification pursuant to paragraph (f) of this section, shall specify the precise information considered, the person or persons from whom the information was obtained, when this information was obtained, the means by which the information was obtained, and the basis for the inspector's belief that such information is accurate and reliable; and

(i) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

Section 1.15. Opening and Closing of Polls. The date and time for the opening and the closing of the polls for each matter to be voted upon at a stockholder meeting shall be fixed by the Chairperson of the meeting and announced at the meeting. The inspector shall be prohibited from accepting any ballots, proxies or votes or any revocations thereof or changes thereto after the closing of the polls, unless the Delaware Court of Chancery upon application by a stockholder shall determine otherwise.

Section 1.16. List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, such list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.16 or to vote in person or by proxy at any meeting of the stockholders. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

ARTICLE II
BOARD OF DIRECTORS

Section 2.01. General Powers. Except as may otherwise be provided by the DGCL or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon it by applicable law, the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock) or these Bylaws, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock).

Section 2.02. Number, Election and Qualification. Subject to the terms of any one or more series of preferred stock, the total number of directors constituting the Board of Directors shall be at least one, or such larger number as may be fixed from time to time exclusively by resolution adopted by the Board of Directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. At any meeting of stockholders at which directors are to be elected, directors shall be elected by the plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote thereon. Directors need not be stockholders of the Corporation. To the extent set forth in the Certificate of Incorporation, the directors of the Corporation shall be divided into classes with terms set forth therein.

Section 2.03. The Chairperson of the Board. The Board of Directors may elect a Chairperson of the Board from among its members. If elected, the Board of Directors shall designate the Chairperson of the Board as either a non-executive Chairperson of the Board or an executive Chairperson of the Board. The Chairperson of the Board shall not be deemed an officer of the Corporation, unless the Board shall determine otherwise. Subject to the control vested in the Board by statute, by the Certificate of Incorporation, or by these Bylaws, the Chairperson of the Board shall, if present, preside over all meetings of the stockholders and of the Board and shall have such other duties and powers as from time to time may be assigned to him or her by the Board, the Certificate of Incorporation or these Bylaws. References in these Bylaws to the "Chairperson of the Board" shall mean the non-executive Chairperson of the Board or executive Chairperson of the Board, as designated by the Board of Directors from time to time. In the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if such person shall be a director) or such other director or officer of the Corporation designated by the Chairperson of the Board shall preside when present at all meetings of the stockholders and the Board.

Section 2.04. Annual and Regular Meetings. The annual meeting of the Board of Directors for the purpose of electing officers and for the transaction of such other business as may come before the meeting shall be held after the annual meeting of the stockholders and may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given. Notice of such annual meeting of the Board of Directors need not be given. The Board of Directors from

time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Notice of regular meetings need not be given, provided, however, that if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be mailed promptly, or sent by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, electronic mail or other electronic means, to each director who shall not have been present at the meeting at which such action was taken, addressed to him or her at his or her usual place of business, or shall be delivered to him or her personally. Notice of such action need not be given to any director who attends the first regular meeting after such action is taken, except when the director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.05. Special Meetings; Notice. Special meetings of the Board of Directors for any purpose or purposes shall be held whenever called by the Chairperson of the Board, Chief Executive Officer or by the Board of Directors pursuant to the following sentence, at such place (within or without the State of Delaware), date and hour as may be specified in the notices of such meetings. Special meetings of the Board of Directors also may be held whenever called pursuant to a resolution approved by the Board of Directors. Notice shall be duly given to each director (a) in person or by telephone at least twenty-four (24) hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, or other means of electronic transmission, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least twenty-four (24) hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or to such other address as any director may request by notice to the Secretary at least seventy-two (72) hours in advance of the meeting. Notice of any special meeting need not be given to any director who attends such meeting except when the director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.06. Quorum; Voting. At all meetings of the Board of Directors, the presence of at least a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the vote of at least a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.07. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place.

Section 2.08. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors or committee.

Section 2.09. Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board of Directors may adopt by resolution such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The directors shall act only as a Board of Directors and the individual directors shall have no power in their individual capacities unless expressly authorized by the Board of Directors.

Section 2.10. Action by Telephonic Communications. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.11. Resignations. Any director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such director, to the Corporation. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.12. Removal of Directors. Directors may be removed from office as provided in the Certificate of Incorporation.

Section 2.13. Vacancies and Newly Created Directorships. Subject to the terms of any one or more series of preferred stock, any vacancies in the Board of Directors for any reason and any newly created directorships resulting by reason of any increase in the number of directors shall be filled only by the Board of Directors acting by a majority of the Board of Directors, even if less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next election of the class of directors to which such directors have been appointed and until their successors are duly elected and qualified, except that, for so long as holders of common stock may act by written consent, such vacancies may also be filled by a majority of the voting power of the Corporation's outstanding shares of common stock entitled to vote generally in the election of directors, voting together as a single class.

Section 2.14. Compensation. The amount, if any, which each director shall be entitled to receive as compensation for such director's services, shall be fixed from time to time by resolution of the Board of Directors or any committee thereof or as an agreement between the Corporation and any director. The directors may be reimbursed their out-of-pocket expenses, if any, of attendance at each meeting of the Board of Directors in accordance with the Corporation's policies in effect from time to time and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation and reimbursement for service as committee members.

Section 2.15. Reliance on Accounts and Reports, Etc. A director, or a member of any committee designated by the Board of Directors, shall, in the performance of such director's or member's duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board of Directors, or by any other person as to the matters the director or the member reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE III

COMMITTEES

Section 3.01. Committees. The Board of Directors, by resolution, may designate from among its members one (1) or more committees of the Board of Directors, each consisting of one or more directors as from time to time may be fixed by the Board of Directors. Any such committee shall serve at the pleasure of the Board of Directors. The Board of Directors may appoint a Chairperson of any committee, who shall preside at meetings of any such committee. The Board of Directors may elect one (1) or more of its members as alternate members of any such committee who may take the place of any absent or disqualified member or members at any meeting of such committee, upon request of the Chairperson of the Board or the Chairperson of such committee.

Section 3.02. Powers. Subject to any limitation imposed by applicable law, each committee shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors or provided in charters or other organization documents of such committee approved by the Board of Directors. No committee shall have the power or authority: to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted by the Board of Directors to the stockholders for approval; or to adopt, amend or repeal the Bylaws of the Corporation.

Section 3.03. Proceedings. Except as otherwise provided herein or required by law, each committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time. Each committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board next following any such proceedings.

Section 3.04. Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such committee or in the rules of such committee, at all meetings of any committee, the presence of members (or alternate members) constituting a majority of the total number of committee members serving shall constitute a quorum for the transaction of business, except that, in the case of one-member committees, the presence of one member shall constitute a quorum and in the case of two-member committees, the presence of two members shall constitute a quorum. The act of the majority of the members present at any meeting at which a quorum is present shall be the act of such committee. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, in accordance with Section 2.08 of Article II of these Bylaws. The members of any committee shall act only as a committee, and the individual members of such committee shall have no power in their individual capacities unless expressly authorized by the Board of Directors or the committee.

Section 3.05. Action by Telephonic Communications. Unless otherwise provided by the Board of Directors, members of any committee may participate in a meeting of such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06. Absent or Disqualified Members. In the absence or disqualification of a member of any committee, if no alternate member is present to act in his or her stead, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 3.07. Resignations. Any member (and any alternate member) of any committee may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such member, to the Board of Directors or the Chairperson of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08. Removal. Any member (and any alternate member) of any committee may be removed at any time, either for or without cause, by resolution adopted by the Board of Directors.

Section 3.09. Vacancies. If any vacancy shall occur in any committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors.

ARTICLE IV

OFFICERS

Section 4.01. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer to serve at the pleasure of the Board of Directors. The Chief Executive Officer shall (a) supervise the implementation of policies adopted or approved by the Board of Directors, (b) exercise a general supervision and superintendence over all the business and affairs of the Corporation subject to the authority of the Board of Directors, (c) appoint and remove subordinate officers, agents and employees, except those appointed by the Board of Directors, and (d) possess such other powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned by the Board of Directors and as may be incident to the office of Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general authority to execute bonds, deeds and contracts in the name of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board of Directors or the Chief Executive Officer.

Section 4.02. Chief Financial Officer of the Corporation. The Board of Directors may elect a Chief Financial Officer of the Corporation to serve at the pleasure of the Board of Directors. The Chief Financial Officer of the Corporation shall (a) have the custody of the corporate funds and securities, except as otherwise provided by the Board of Directors, (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, (c) deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors, (d) disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and (e) render to the Chief Executive Officer and the Board of Directors, whenever they may require it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.

Section 4.03. Treasurer and Assistant Treasurers. The Board of Directors may elect a Treasurer of the Corporation and any number of Assistant Treasurers to serve at the pleasure of the Board of Directors. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board or the Chief Executive Officer or the Chief Financial Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as authorized by the Board or the Chief Executive Officer, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation. The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

Section 4.04. Secretary of the Corporation. The Board of Directors shall elect a Secretary of the Corporation to serve at the pleasure of the Board of Directors. The Secretary of the Corporation shall (a) keep minutes of all meetings of the stockholders and of the Board of Directors, (b) authenticate records of the Corporation, (c) give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and (d) in general, have such powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned to him or her by the Board of Directors or the Chief Executive Officer and as may be incident to the office of Secretary of the Corporation. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. The Secretary shall see that all books, reports, statements certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be, which may be kept or filed (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors.

Section 4.05. Other Officers Elected by Board of Directors. At any meeting of the Board of Directors, the Board of Directors may elect a President (who may or may not be the Chief Executive Officer), a Chief Operations Officer, Vice Presidents, Assistant Secretaries or such other officers of the Corporation as the Board of Directors may deem necessary, to serve at the pleasure of the Board of Directors. Other officers elected by the Board of Directors shall have such powers and perform such duties as may be assigned to such officers by or pursuant to authorization of the Board of Directors or by the Chief Executive Officer. Any number of offices may be held by the same person.

Section 4.06. Term of Office. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign, but, subject to the requirements of the Certificate of Incorporation, any officer may be removed pursuant to the provisions set forth in Section 4.07.

Section 4.07. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering a resignation in writing or by electronic transmission, signed or given by such officer, to the Board of Directors, the Chief Executive Officer or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by or pursuant to authorization of the Board of Directors.

Section 4.08. Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these Bylaws or pursuant to authorization of the Board of Directors, or which generally pertain to such officer's title and each officer shall exercise such powers and perform such duties as may be required by law.

ARTICLE V

CAPITAL STOCK

Section 5.01. Certificates of Stock. The Board of Directors may authorize that some or all of the shares of any or all of the Corporation's classes or series of stock be evidenced by a certificate or certificates of stock. The Board of Directors may also authorize the issue of some or all of the shares of any or all of the Corporation's classes or series of stock without certificates. The rights and obligations of stockholders with the same class and/or series of stock shall be identical whether or not their shares are represented by certificates.

(a) Shares with Certificates. If the Board of Directors chooses to issue shares of stock evidenced by a certificate or certificates, each individual certificate shall include the following on its face: (i) the Corporation's name, (ii) the fact that the Corporation is organized under the laws of Delaware, (iii) the name of the person to whom the certificate is issued, (iv) the number of shares represented thereby, (v) the class of shares and the designation of the series, if any, which the certificate represents, and (vi) such other information as applicable law may require or as may be lawful. If the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations determined for each class or series (and the authority of the Board of Directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate shall state on its front or back that the Corporation will furnish the stockholder this information in writing, without charge, upon request. Each certificate of stock issued by the Corporation shall be signed by any two officers of the Corporation. If the person who signed a certificate no longer holds office when the certificate is issued, the certificate is nonetheless valid.

(b) Shares without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

Section 5.02. Signatures. All signatures on the certificate referred to in Section 5.01 of these Bylaws may be in engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose engraved or printed signature has been placed upon a certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03. Lost, Stolen or Destroyed Certificates. Except as provided in this Section 5.03, no new share certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Corporation of an affidavit (or other document acceptable to the Corporation) of the owner or owners of such certificate, setting forth such allegation. The Corporation may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond (or other security, including an indemnification agreement) sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. Subject to the provisions of the Certificate of Incorporation and these Bylaws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation. Except as otherwise required by law, no transfer of stock shall be valid against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

Section 5.05. Record Date.

(a) In order to determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, provided, however, that the Board of Directors may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 5.06. Registered Stockholders. The Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate.

Section 5.07. Transfer Agent and Registrar. The Board of Directors may appoint one (1) or more transfer agents and one (1) or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

ARTICLE VI INDEMNIFICATION

Section 6.01. Indemnification and Advancement of Expenses. The Corporation shall indemnify and provide advancement to any Indemnitee (as defined below) to the fullest extent permitted by law, as such may be amended from time to time. The rights to indemnification and advancement conferred in this Section shall be contract rights. In furtherance of the foregoing indemnification and advancement obligations, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(a) if, by reason of his or her Corporate Status (as defined below), Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Corporation. Pursuant to this Section 6.01(a), any Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(b) if, by reason of his or her Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Corporation. Pursuant to this Section 6.01(b), any Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been finally adjudged to be liable to the Corporation unless and to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine that such indemnification may be made.

(c) Other Sources. The Corporation hereby acknowledges that Indemnitees may have certain rights to indemnification, advancement of expenses and/or insurance provided by sources other than the Corporation (“Third Party Indemnitors”). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to the Indemnitees are primary and any obligation of the Third Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Indemnitees are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by the Indemnitees and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement by reason of such Indemnitee’s Corporate Status to the extent legally permitted and as required by the terms of this paragraph and the Bylaws of the Corporation from time to time (or any other agreement between the Corporation and the Indemnitees), without regard to any rights the Indemnitees may have against the Third Party Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Third Party Indemnitors from any and all claims against the Third Party Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Third Party Indemnitors on behalf of the Indemnitees with respect to any claim for which the Indemnitees have sought indemnification from the Corporation shall affect the foregoing and the Third Party Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnitees against the Corporation. The Corporation and the Indemnitees agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this paragraph.

Section 6.02. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Article VI, to the extent that any Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If such Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 6.02 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6.03. Employees and Agents. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action. Without limiting the generality of the foregoing, the Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and advancement of expenses to employees and agents of the Corporation.

Section 6.04. Advancement of Expenses. Notwithstanding any other provision of this Article VI, the Corporation shall advance all Expenses incurred by or on behalf of any Indemnitee in connection with any Proceeding by reason of Indemnitee’s Corporate Status within thirty (30) days after the receipt by the Corporation of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, and regardless of such Indemnitee’s ability to repay any such amounts in the

event of an ultimate determination that Indemnitee is not entitled thereto. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 6.04 shall be unsecured and interest free.

Section 6.05. Non-Exclusivity. The rights to indemnification and to the payment of Expenses incurred in defending a Proceeding in advance of the final disposition of such Proceeding conferred in this Article VI shall not be exclusive of any other rights which any person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders, resolution of directors or otherwise. The assertion or employment of any right or remedy in this Article VI, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 6.06. Insurance. The Corporation shall have the power to purchase and maintain insurance, at its expense, to the fullest extent permitted by law, as such may be amended from time to time. Without limiting the generality of the foregoing, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation, or who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, against any liability asserted against him or her and incurred by him or her or on his or her behalf in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

Section 6.07. Indemnification and Advancement. The Corporation shall indemnify, advance expenses to and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (Indemnitee) who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Corporation, by reason of any action (or failure to act) taken by him or her of any action (or failure to act) on his or her part while acting as a director or officer of the Corporation, or by reason of the fact that Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Section 6.07.

Section 6.08. Exception to Rights of Indemnification and Advancement. Notwithstanding any provision in this Article VI, the Corporation shall not be obligated by this Article VI to make any indemnity or advancement in connection with any claim made against an Indemnitee:

(a) subject to Section 6.01(c), for which payment has actually been made to or on behalf of such Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by such Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) for reimbursement to the Corporation of any bonus or other incentive-based or equity based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation in each case as required under the Exchange Act; or

(d) in connection with any Proceeding (or any part of any Proceeding) initiated by such Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by such Indemnitee against the Corporation or its directors, officers, employees or other Indemnitees, unless (i) the Corporation has joined in or, prior to such Proceeding's initiation, the Board of Directors authorized such Proceeding (or any part of such Proceeding), (ii) the Corporation provides the indemnification or advancement, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, or (iii) the Proceeding is one to enforce such Indemnitee's rights under this Article VI, Section 12 of the Certificate of Incorporation, or any other indemnification, advancement or exculpation rights to which Indemnitee may at any time be entitled under applicable law or any agreement.

Section 6.09. Definitions. For purposes of this Article VI:

(a) "Corporate Status" describes the status of an individual who is or was or has agreed to become a director or officer of the Corporation or while an officer or director of the Corporation who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise.

(b) "Enterprise" shall mean the Corporation and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Corporation (or any of their wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(c) "Expenses" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of

any payments under this Article VI, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding, including, without limitation, reasonable compensation for time spent by the Indemnitee for which he or she is not otherwise compensated by the Corporation or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the principal, premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent.

(d) “Indemnitee” means any current or former director or officer of the Corporation; and

(e) “Proceeding” shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact of Indemnitee’s Corporate Status, by reason of any action (or failure to act) taken by him or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Article VI. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this Article VI.

Section 6.10. Right of Indemnitee to Bring Suit. If a claim under this Article VI is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, Indemnitee may at any time thereafter bring suit against the Corporation in the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware to recover the unpaid amount of the claim. In any such action, the Corporation shall have the burden of proving that Indemnitee was not entitled to the requested indemnification, advancement or payment of Expenses. It shall be a defense to any such action (other than an action brought to enforce a claim for Expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that Indemnitee has not met the standards of conduct which make it permissible under these Bylaws, the Certificate of Incorporation or the DGCL for the Corporation to indemnify Indemnitee for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification or advancement is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in these Bylaws, the Certificate of Incorporation or the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met any applicable standard of conduct. If successful, in whole or in part, Indemnitee shall also be entitled to be paid the Expenses of prosecuting such action to the fullest extent permitted by law.

Section 6.11. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.12. Change in Rights. Neither any amendment nor repeal of this Article VI, nor the adoption of any provision in these Bylaws inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01. Dividends. Subject to any applicable provisions of law or the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property or shares of the Corporation's capital stock. A member of the Board of Directors, or a member of any committee designated by the Board of Directors, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 7.02. Execution of Instruments. The Board of Directors may authorize, or provide for the authorization of, officers, employees or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments. The officers of the Corporation may also execute and deliver such contracts or instruments which generally pertain to the duties associated with such officer's title. Any person who is authorized to execute a contract, instrument or other document on behalf of the Corporation may execute a power of attorney allowing another person to execute such document on behalf of the Corporation.

Section 7.03. Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chief Executive Officer, the President, if any, the Chief Financial Officer, any Executive Vice President or any other person authorized by the Board of Directors shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders or equity holders of any corporation or other entity in which the Corporation may hold stock or equity interests, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock or equity interests. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation or entity without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 7.04. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

Section 7.05. Notices. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Section 7.06. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in the DGCL, (ii) record the information specified in the DGCL, and record transfers as specified in the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section 7.07. Severability. If any provision (or any part thereof) of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of these Bylaws (including, without limitation, each portion of any section of these Bylaws containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

ARTICLE VIII

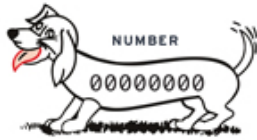
AMENDMENT OF BYLAWS

Section 8.01. By the Board. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may make, alter, amend, add to or repeal any and all of these Bylaws.

Section 8.02. By the Stockholders. Subject to the provisions of the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all Bylaws of the Corporation or to adopt any provision inconsistent therewith.

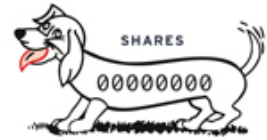
ARTICLE IX
CONSTRUCTION

In the event of any conflict between the provisions of these Bylaws as in effect from time to time and the provisions of the Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes corporations, other business entities, and natural persons.



Portillo's®

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE



SEE REVERSE SIDE FOR CERTAIN DEFINITIONS

CUSIP000000000

THIS CERTIFIES THAT

IS THE OWNER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK, \$0.01 PAR VALUE, OF

PORTILLO'S INC.

transferable on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

IN WITNESS WHEREOF, the said Corporation has caused this certificate to be signed by facsimile signatures of its duly authorized officers.

DATED

PRESIDENT AND CHIEF EXECUTIVE OFFICER

GENERAL COUNSEL

COUNTER SIGNED AND REGISTERED:
AMERICAN STOCK TRANSFER & TRUST COMPANY

TRANSFER AGENT
AND REGISTRAR

AUTHORIZED SIGNATURE

THE BOARD OF THIS CORPORATION HAS THE AUTHORITY TO CREATE AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF CLASSES OR SERIES OF SHARES OF CAPITAL STOCK OTHER THAN COMMON STOCK. THIS CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON WRITTEN REQUEST SENT TO ITS PRINCIPAL EXECUTIVE OFFICES, AND WITHOUT CHARGE, A FULL STATEMENT OF THE BOARD'S AUTHORITY TO CREATE AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF CLASSES OR SERIES OF SHARES OF CAPITAL STOCK AS WELL AS THE DESIGNATIONS, PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF THE SHARES OF EACH CLASS OR SERIES THEN OUTSTANDING OR AUTHORIZED TO BE ISSUED.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UTMA	-	_____	Custodian	_____
				(Cust)		(Minor)
TEN ENT	- as tenants by entires				under Uniform Transfers to Minors	
JT TEN	- as joint tenants with right of survivorship and not as tenants in common	Act	-	_____	(State)	

Additional abbreviations may also be used though not in the above list.

For value received _____ hereby sell, assign, and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPE WRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE)

_____ Shares
*of the capital stock represented by the within Certificate,
and do hereby irrevocably constitute and appoint _____
_____ Attorney
to transfer the said stock on the books of the within-named
Corporation with full power of substitution in the premises.*

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR UNNECESSARY CHANGE WHEREAS:

SIGNATURE GUARANTEED

ALL GUARANTEES MUST BE MADE BY AN INDIVIDUAL INDIVIDUAL SUCH AS A BANK OR BROKER WHICH IS A PARTICIPANT IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM PROGRAM, THE NEW YORK STOCK EXCHANGE'S REGULATION SIGNATURE PROGRAM (REG-S), OR THE STOCK EXCHANGE'S MEDALLION PROGRAM (SEMP) AND MUST NOT BE OBTAINED GUARANTEED BY A NEW YORK PUBLIC AGENCY ACCOUNT.

PHD GROUP HOLDINGS LLC
2014 EQUITY INCENTIVE PLAN
CLASS A UNIT OPTION AGREEMENT
(Time Vesting)

This Option is granted by PHD Group Holdings LLC, a Delaware limited liability company (the "Company"), to [**Name of Participant**] (the "Participant"), pursuant to this Class A Unit option agreement (the "Agreement") and the Company's 2014 Equity Incentive Plan (the "Plan"). All capitalized terms not otherwise defined herein shall have the meaning provided in the Plan.

1. Grant of Option. The Company hereby grants to the Participant, on [**date**] (the "Date of Grant") an Option to purchase, in whole or in part, on the terms provided herein and in the Plan a total of [**•**] Class A Units, subject to adjustment as set forth in the Plan. The exercise price of the Option shall be [**\$•**]¹ per Class A Unit (the "Option Price") which is not less than the Fair Market Value of the Class A Units as of the Date of Grant. The Option is granted pursuant to and is governed in all respects by the Plan.
2. Vesting; Termination of Employment.
 - (a) Subject to the earlier termination or cancellation of the Option as set forth herein or in the Plan, the Option shall be eligible to vest and become exercisable with respect to twenty percent (20%) of the Class A Units subject to the Option on each of the first, second, third, fourth and fifth anniversaries of the Date of Grant, such that the Option shall be vested and exercisable with respect to 100% of the Class A Units subject to the Option on the fifth anniversary of the Date of Grant.
 - (b) In the event of a Sale Transaction, the Units subject to the Option shall be deemed to be fully vested and exercisable with respect to 100% of the Class A Units subject to the Option.
 - (c) The portion of the Option that has become vested and exercisable in accordance with the terms of this Section 2 is hereinafter referred to as the "Vested Portion". The portion of the Option that is not a Vested Portion shall be referred to as the "Unvested Portion".
 - (d) If (i) the Participant's Employment is terminated (A) for Cause, (B) due to the Participant's resignation after an inquiry by the Board as to the existence of Cause has been initiated and the Board determines that Cause existed as of the date of such resignation, or (C) due to the Participant's resignation at a time when Participant has committed acts or omissions that would constitute Cause, (ii) the Participant's Employment is terminated due to the Participant's resignation other than for Good Reason prior to the fifth anniversary of the Date of Grant, or (iii) the Participant violates any Restrictive Covenant, then both the Vested Portion and Unvested Portion shall be automatically terminated and cancelled effective on the earliest of the date the Participant's Employment is terminated for Cause or due to the Participant's resignation other than for Good Reason, or the date the act or omission constituting Cause or a violation of any Restrictive Covenant is determined to have occurred, as applicable, without payment of consideration therefor.

¹ Will be FMV (initially \$1 per Class A Unit).

- (e) Upon termination of the Participant's Employment, the Unvested Portion of the Option shall automatically be cancelled without payment of consideration therefor, and the Vested Portion of the Option shall remain exercisable for the period set forth in Section 3(a) (other than as described in Section 2(d)). Upon termination of the Participant's Employment, the Participant, by the Participant's execution of this Agreement, shall be deemed to have (i) agreed that the Unvested Portion of the Option shall be forfeited as of the time of termination, and shall not vest during any severance period or common law reasonable notice of termination, regardless of the reason for termination including, without limitation, a termination of the Participant's Employment without Cause, and (ii) irrevocably waived any and all rights to a claim for such Class A Units subject to the Option or other compensation in lieu of such Class A Units subject to the Option.
- (f) Notwithstanding anything to the contrary in Section 7.9(c)(i) of the LLC Agreement, in the event that the Participant resigns without Good Reason on or after the fifth anniversary of the Date of Grant, the Repurchase Price (as defined in the LLC Agreement) shall be the Deemed Liquidation Value (as defined in the LLC Agreement) of the Participant's Repurchase Securities (as defined in the LLC Agreement).

3. Exercise of Option.

(a) Period of Exercise.

- (i) Subject to Sections 3(a)(ii) and (iii), the Participant may exercise all or any part of the Vested Portion at any time prior to the tenth (10th) anniversary of the Date of Grant.
- (ii) In the case of termination of the Participant's Employment due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant (or the Participant's heir or legatee, if applicable) may exercise all or any part of the Vested Portion at any time prior to the earliest to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the one hundred eightieth (180th) day following the date of Participant's termination of Employment due to death or Disability, as applicable.
- (iii) In the case of termination of the Participant's Employment for any reason other than as described in Section 2(d), or due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant may exercise all or any part of the Vested Portion of the Option at any time prior to the earlier to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the ninetieth (90th) day following the date of termination.

(b) Method of Exercise.

- (i) Subject to Section 3(a), the Vested Portion of the Option may be exercised by delivering to the Company at its principal office a properly completed exercise notice in the form attached hereto as Exhibit A, which shall specify the number of Class A Units for which the Option is being exercised (the "Purchased Class A

Units”). The exercise notice shall be accompanied by payment in full of the Option Price made by cash or check, at the election of the Participant, or by such other means as are permitted by the Administrator in its sole discretion. The Participant shall not have any rights to distributions or other rights of a unitholder with respect to Class A Units subject to the Option until the Participant has submitted to the Company a properly completed exercise notice and paid in full for such Class A Units, satisfied any applicable withholding requirements and, if applicable, satisfied any other conditions imposed by the Administrator or pursuant to the Plan or this Agreement or the LLC Agreement.

- (ii) Upon the Administrator’s determination that the Option has been validly exercised as to any of the Purchased Class A Units, that the Participant has paid in full for such Purchased Class A Units as provided for in Section 3(b)(i) hereof, and that the Participant has satisfied any applicable withholding requirements with respect to such Purchased Class A Units, the Company may, but shall not be required to issue certificates in the Participant’s name for such Purchased Class A Units.
 - (iii) As a condition to the exercise of the Option, the Participant shall execute a joinder agreement pursuant to which the Participant shall become fully bound by the terms set forth in the LLC Agreement, unless the Administrator determines otherwise or unless the Participant is already a party to the LLC Agreement.
 - (iv) Each married Participant shall obtain the consent of such Participant’s spouse to evidence such spouse’s consent to be bound by the terms and conditions of this Agreement and the LLC Agreement as to their interest, whether as community property or otherwise, if any, in the Class A Units owned by such Participant.
- (c) Section 83(b) Election Required. As a condition subsequent to the issuance of Class A Units upon exercise of the Option, within thirty (30) days following such exercise, the Participant shall make an election pursuant to Section 83(b) of the Code, substantially in the form attached hereto as Exhibit B, concerning such issued Class A Units and shall be required to file promptly a copy of such election with the Company.

4. Restrictive Covenants.

- (a) Confidentiality. The Participant recognizes that the services to be performed by the Participant as an employee of the Company are special, unique and extraordinary in that, by reason of the Participant’s Employment, the Participant will acquire, certain Confidential Information of the Company or its Affiliates, the use or disclosure of which could cause the Company or its Affiliates substantial losses and damages which could not be readily calculated and for which no remedy at law would be adequate. In consideration of the Option granted to the Participant hereunder, from the Date of Grant and at all times thereafter, the Participant shall maintain in strict confidence and not disclose to third parties or use in any task, work or business (except on behalf of the Company) any proprietary or Confidential Information regarding the Company and/or the Participant’s work with the Company, including without limitation, methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers,

competitors, markets or other specialized information or proprietary matters (“Confidential Information”). The Participant and the Company acknowledge that the Company would not grant the Option hereunder or provide the Participant with access to its Confidential Information without the covenants and promises contained in this paragraph. Notwithstanding the foregoing restrictions, the Participant may disclose any Confidential Information to the extent required by an order of any court or other governmental authority, but in each case only after the Company has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- (b) Intellectual Property. If the Participant has created, invented, designed, developed, contributed to or improved any works of authorship, inventions, intellectual property, materials, documents or other work product (including without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) (“Works”), either alone or with third parties, prior to the Participant’s Employment with the Company, that are relevant to or implicated by such Employment (“Prior Works”), the Participant hereby grants the Company a perpetual, non-exclusive, royalty-free, worldwide, assignable, sublicensable license under all rights and intellectual property rights (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) therein for all purposes in connection with the Company’s current and future business. If the Participant creates, invents, designs, develops, contributes to or improves any Works, either alone or with third parties, at any time during the Participant’s Employment with the Company and within the scope of such Employment and/or with the use of any Company resources (“Company Works”), the Participant shall promptly and fully disclose such works to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. The Participant agrees to keep and maintain adequate and current written records (in the form of notes, sketches, drawings, and any other form or media requested by the Company) of all Company Works. The records will be available to and remain the sole property and intellectual property of the Company at all times. The Participant shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company’s expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company’s rights in the Prior Works and Company Works. If the Company is unable for any other reason to secure the Participant’s signature on any document for this purpose, then the Participant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as the Participant’s agent and attorney-in-fact, to act for and on the Participant’s behalf to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

- (c) **Non-Solicitation.** Participant covenants and agrees that during employment and for a period of two (2) years commencing with the date of Participant's termination of employment with the Company (the "**Restriction Period**"), Participant shall not directly or indirectly (i) influence or attempt to influence or solicit any employees, or independent contractors of the Company or any of its Affiliates to restrict, reduce, sever or otherwise alter their relationship with the Company or such Affiliates or assist any other person to do so, (ii) hire any employees, or independent contractors of the Company or any of its Affiliates or assist any other person in doing so, (iii) solicit or induce, or attempt to solicit or induce, any person or entity that is (x) then a customer of the Company or any of its Affiliates to cease being a customer of the Company or any of its Affiliates or (y) a prospective customer of the Company or any of its Affiliates with which the Participant had contact with to become a customer, or in each case of (x) and (y), to divert all or any part of any such person's or entity's business from the Company or any of its Affiliates (for the avoidance of doubt, in each case of (x) and (y), "customer" is not intended to include individual retail customers), or (iv) assist any other person or entity in any way to do, or attempt to do, anything prohibited by **Sections 4(c)(i), (ii) or (iii)**.
- (d) **Non-Competition.** Participant hereby acknowledges and agrees that during the Restricted Period, Participant shall not, directly or indirectly, be employed by or otherwise provide services for, including, but not limited to, as a consultant, independent contractor or in any other capacity, or own or invest in (other than ownership for investment purposes of less than two percent (2%) of a publicly traded company) any company or other entity or organization that, directly or indirectly, engages in the preparation, licensing and/or sale of (i) hot dogs, (ii) chili, (iii) Italian beef sandwiches, (iv) hamburgers, (v) chicken sandwiches, (vi) Italian sausage, (vii) ribs and/or (viii) salads in the fast casual restaurant industry, the catering industry, the grocery industry or the internet food sales industry.
- (e) **Survival.** It is the desire and intent of the parties to this option Agreement that the provisions of this **Section 4** shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provisions or portion of this **Section 4** shall be adjudicated to be invalid or unenforceable, this **Section 4** shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such amendment to apply only with respect to the operation of such Section in the particular jurisdiction in which such adjudication is made.
- (f) Participant acknowledges and agrees that the restrictive covenants contained in this **Section 4** are in consideration of the promises and covenants contained in this Agreement, including but not limited to the grant of the Option pursuant to the terms of this Agreement and the Plan, the provision to Participant of access to the Company's goodwill and Confidential Information, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Participant.
- (g) The parties recognize that the performance of the obligations under this **Section 4** by the Participant is special, unique and extraordinary in character, and that in the event of the breach by the Participant of the terms and conditions of this **Section 4** to be performed by Participant, the Company shall be entitled, if it so elects, to obtain damages for any breach of this **Section 4** or to enforce the specific performance thereof by the Participant.

5. Withholding. Whenever Purchased Class A Units are to be issued, the Administrator shall have the right to require the Participant to remit to the Company cash sufficient to satisfy all federal, state and local withholding tax requirements prior to issuance of the Purchased Class A Units and the delivery of any certificate or certificates for such Purchased Class A Units. The Administrator shall also have the right to withhold from any issuance of Purchased Class A Units or other amounts payable to a Participant hereunder such amount as is necessary to satisfy any withholding obligations.
6. Non-transferability of Option. The Option and the Participant's other rights and obligations under the Plan and this Agreement may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its Affiliates; provided, that, the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. No such permitted transfer of the Option to heirs or legatees of the Participant shall be effective to bind the Company or any of its Affiliates unless the Administrator shall have been furnished with written notice thereof and a copy of such evidence as the Administrator may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions hereof. During the Participant's lifetime, the Unit Option is exercisable only by the Participant.
7. Effect on Employment. Neither the granting of the Option evidenced hereby, nor the issuance of Class A Units upon exercise of this Option, nor this Agreement shall impose any obligation on the Company or its Affiliates to continue the Employment of the Participant, nor shall it lessen or affect the Company's or its Affiliates' rights to terminate the Employment of such Participant at any time or discipline such Participant at any time.
8. Legend on Certificates. If the Purchased Class A Units are certificated, such certificates shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan or the rules, regulations, and other requirements of the Securities and Exchange Commission or other securities regulatory authority, or any stock exchange upon which such Purchased Class A Units are listed, and any applicable federal or state laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.
9. Securities Laws. Upon the acquisition of any Purchased Class A Units, the Participant will make or enter into such written representations, warranties and agreements as the Administrator may reasonably request in order to comply with applicable securities laws or with this Agreement.
10. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered in the manner specified herein or, in the absence of such specification, shall be deemed to have been duly given when delivered by hand, upon electronic confirmation of receipt by email, or one (1) business day after sending by nationally reputable overnight delivery service, to the respective addresses of the parties set forth below:

For notices and communications to the Company to:

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

Berkshire Partners LLC

Attention:

Email:

and a further copy (which alone shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attention: Michael Nissan

Email: michael.nissan@weil.com

Weil, Gotshal & Manges LLP

100 Federal Street

34th Floor

Boston, MA 02110

Attention: Shayla Harlev

Email: Shayla.Harlev@weil.com

and to the Participant at the address appearing in the most recent personnel records of the Company or an Affiliate, as applicable, for the Participant or to either party hereto at such other address as either party may hereafter designate in writing to the other.

12. Choice of Law. This Agreement (including, without limitation, the validity, construction, effect or performance hereof or thereof and any remedies hereunder or thereunder or related hereto or thereto) and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution, performance or breach of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provisions (whether Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
13. Option Subject to Plan. By entering into this Agreement, the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan. The Option is subject to the Plan. The terms and provisions of the Plan, as it may be amended from time to time, are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.
14. Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

15. Headings. All headings and captions in this Agreement are for purposes of reference only and shall not be construed to limit or affect the substance of this Agreement.
16. Entire Agreement. This Agreement, together with the Exhibits hereto, the 2014 PHD Group Holdings LLC Equity Incentive Plan and the LLC Agreement, set forth the entire understanding of the parties, and as of the Date of Grant supersede all prior agreements and all other arrangements and communications, whether oral or written, with respect to the subject matter hereof and thereof; provided, however, that this Section 16 is not intended to and shall not supersede any Restrictive Covenants, and such Restrictive Covenants shall also remain in full force and effect pursuant to the terms thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Date of Grant.

PHD GROUP HOLDINGS LLC

Per: _____

Name:

Title:

Agreed and acknowledged
as of the Date of Grant:

(name)

EXHIBIT A

I, _____ hereby exercise the Option to purchase _____ class A units (“Class A Units”) of PHD Group Holdings LLC, (the “Company”) at a purchase price of \$_____ per Class A Unit. This Exercise Notice is delivered in respect of the Option to purchase _____ Class A Units of the Company that was granted to me on _____ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a check, or evidence of a wire transfer payable to the Company in the amount of \$_____ as full payment for the Class A Units to be received upon exercise of the Option.

Date

Participant’s Signature

EXHIBIT B

FORM OF 83(b) ELECTION

Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: _____

TAXPAYER'S SOCIAL SECURITY NUMBER: _____

ADDRESS: _____

TAXABLE YEAR: Calendar Year 20__

2. The property which is the subject of this election is _____ units of Class A Common Units of PHD Group Holdings LLC.

3. The property was transferred to the undersigned on **[Insert date of exercise of Option]**.

4. The property is subject to the following restrictions: The Class A Units may be repurchased by PHD Group Holdings LLC in connection with the termination of employment in the amount equal to either (i) the lower of cost or fair market value in the case of a termination for Cause or a resignation without Good Reason prior to the fifth anniversary of the date of grant or (ii) the fair market value in the case of any other termination, including resignation without Good Reason on or after the fifth anniversary of the date of grant.

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$_____ per unit x _____ units = \$_____.

6. For the property transferred, the undersigned paid \$_____ per unit x _____ units = \$_____.

7. The amount to include in gross income is \$_____. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: _____

Taxpayer

**PHD GROUP HOLDINGS LLC
2014 EQUITY INCENTIVE PLAN**

**CLASS A UNIT OPTION AGREEMENT
(TIME AND PERFORMANCE VESTING)**

This Option is granted by PHD Group Holdings LLC, a Delaware limited liability company (the “Company”), to [**Name of Participant**] (the “Participant”), pursuant to this Class A Unit option agreement (the “Agreement”) and the Company’s 2014 Equity Incentive Plan (the “Plan”). All capitalized terms not otherwise defined herein shall have the meaning provided in the Plan.

1. **Grant of Option.** The Company hereby grants to the Participant, on [**date**] (the “Date of Grant”), the right and option to purchase, in whole or in part, on the terms provided herein and in the Plan, a total of [**•**] Class A Units, subject to adjustment as set forth in the Plan. The exercise price of the Option shall be [**\$•**]¹ per Class A Unit (the “Option Price”), which is not less than the Fair Market Value of the Class A Units on the Date of Grant. The Option is granted pursuant to and is governed in all respects by the Plan.
2. **Vesting; Termination of Employment.**
 - (a) Subject to the earlier termination or cancellation of the Option as set forth herein or in the Plan, the Option shall be eligible to vest and become exercisable under Section 2(b) hereof upon achievement of the time-vesting condition described in this Section 2(a) (the “Time Condition”).
 - (i) The Time Condition shall be achieved with respect to twenty percent (20%) of the Class A Units subject to the Option on each of the first, second, third, fourth and fifth anniversaries of the Date of Grant, such that the Time Condition shall be achieved with respect to 100% of the Class A Units subject to Option on the fifth anniversary of the Date of Grant.
 - (ii) In the event of a Sale Transaction, the Class A Units subject to the Option, to the extent they have not then met the Time Condition, shall be deemed to have met the Time Condition with respect to 100% of the Class A Units subject to the Option.
 - (b) Any Class A Units subject to the Option shall vest and become exercisable as follows:
 - (i) On each date that members of the Berkshire Owner Group receive Proceeds (each such date, a “Determination Date”), a determination shall be made as to whether any portion of the Option is vested and exercisable with respect to a number of Class A Units. The final Determination Date of all such determinations shall be (A) a Common Sale (other than upon or after an IPO) or Sale Transaction, in any case, after which the Berkshire Owner Group holds less than ten percent (10%) of the Acquired Class A Units or (B) that date which is thirty (30) consecutive trading days following the date on which all of the Acquired Class A Units become freely tradable after an IPO and no restrictions exist (due to any Market Limitation, contract or other restriction at law) that would prohibit or limit the Acquired Class A Units from being sold in the public

¹ Will be FMV (initially \$1 per Class A Unit).

markets after an IPO (such date, the “Final Determination Date”). For purposes of this Agreement, “Market Limitation” means insufficient trading liquidity for Acquired Class A Units to be efficiently sold through the principal securities exchange or market on which the Class A Units are listed or posted for trading or quoted, which will be deemed to exist if the average monthly trading volume of the Class A Units is less than two (2) times the average number of Acquired Class A Units outstanding, each calculated as of the most recently ended month.

- (ii) Subject to Section 2(b)(v) hereof, if a Determination Date other than a Final Determination Date occurs, the portion of the Option that shall become vested and exercisable shall be in respect of the total number of Class A Units *multiplied by* the IRR Percentage (as defined below), where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment with the Proceeds for the purpose of determining such Internal Rate of Return being the Proceeds actually received by the Berkshire Owner Group on or prior to such Determination Date (including in the Common Sale or Sale Transaction triggering the Determination Date, and after giving effect to any dilution from the vesting of any Options outstanding under the Plan).
- (iii) Subject to Section 2(b)(v) hereof, if a Final Determination Date occurs as a result of an event set forth in Section 2(b)(i)(A), the portion of the Class A Units subject to the Option that shall become vested and exercisable shall be the total number of Class A Units *multiplied by* the IRR Percentage, where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment with the Proceeds for the purpose of determining such Internal Rate of Return being the sum of (A) the Proceeds actually received by the Berkshire Owner Group on or prior to such Final Determination Date (including in the Common Sale or Sale Transaction triggering the Final Determination Date, and after giving effect to any dilution from the vesting of any Options outstanding under the Plan) and (B) the Fair Market Value of the retained Acquired Class A Units as if such Acquired Class A Units were sold for cash.
- (iv) Subject to Section 2(b)(v) hereof, if a Final Determination Date occurs as the result of an event set forth in Section 2(b)(i)(B), the portion of the Class A Units subject to the Option that shall become vested and exercisable shall be the total number of Class A Units *multiplied by* the IRR Percentage, where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment, with the Proceeds for the purpose of determining such Internal Rate of Return being equal to the sum of (A) (x) the total number of Acquired Class A Units then held immediately after giving effect to the applicable transactions triggering such Final Determination Date *multiplied by* (y) the average closing bid price of the Class A Units as reported on the principal securities exchange in the United States and/or Canada on which such Class A Units are listed or posted for trading or as quoted on Nasdaq, for the thirty (30) consecutive trading days commencing on the date following the date on which such Class A Units becomes freely tradable and no restrictions (due to any Market Limitation, contract or other restriction at law) exist which prohibit or limit the Acquired Class A Units from

being sold to the public (the "Average Closing Price"), *plus* (B) the aggregate Proceeds actually received by the Berkshire Owner Group on or prior to such Final Determination Date (including in the Common Sale or Sale Transaction triggering the Final Determination Date, and, in each case, after giving effect to any dilution from the vesting of any Options outstanding under the Plan).

- (v) Notwithstanding the foregoing, no portion of the Class A Units subject to the Option shall become vested and exercisable under this Section 2 unless upon the applicable Determination Date the Berkshire Owner Group has received on or prior to such Determination Date aggregate Proceeds equal to or greater than two times (2.0x) the aggregate amount of the Berkshire Equity Investment, and for greater certainty, (1) in the case of a Final Determination Date that occurs under Section 2(b)(i)(A), the aggregate Proceeds for the purposes of this Section 2 shall include the Fair Market Value of any retained Acquired Class A Units as if such Acquired Class A Units were sold for cash, and (2) in the case of a Final Determination Date that occurs under Section 2(b)(i)(B) the aggregate Proceeds for the purposes of this Section 2 shall include an amount equal to (A) the total number of Acquired Class A Units then held immediately after giving effect to the applicable transaction(s) triggering such Final Determination Date, *multiplied by* (B) the Average Closing Price as of such Final Determination Date.
- (vi) The conditions specified in clauses (ii)-(v) above are each referred to as a "Performance Condition".
- (c) The portion of the Option that has satisfied the Time Condition and the applicable Performance Condition is hereinafter referred to as the "Vested Portion". The portion of the Option that is not a Vested Portion shall be referred to as the "Unvested Portion".
- (d) If (i) the Participant's Employment is terminated (A) for Cause, (B) due to the Participant's resignation after an inquiry by the Board as to the existence of Cause has been initiated and the Board determines that Cause existed as of the date of such resignation, or (C) due to the Participant's resignation at a time when Participant has committed acts or omissions that would constitute Cause, (ii) the Participant's Employment is terminated due to the Participant's resignation other than for Good Reason prior to the fifth anniversary of the Date of Grant, or (iii) the Participant violates any Restrictive Covenant, then both the Vested Portion and Unvested Portion shall be automatically terminated and cancelled effective on the earliest of the date the Participant's Employment is terminated for Cause or due to the Participant's resignation other than for Good Reason, or the date the act or omission constituting Cause or a violation of any Restrictive Covenant is determined to have occurred, as applicable, without payment of consideration therefor.
- (e) Upon termination of the Participant's Employment due to the Participant's death or Disability, without Cause, due to the Participant's resignation for Good Reason, or due to the Participant's resignation without Good Reason on or after the fifth anniversary of the Date of Grant, the portion of the Option that has satisfied the Time Condition but not the applicable Performance Condition shall remain outstanding until the Final Determination Date. At the Final Determination Date, the portion of such Option that becomes exercisable shall be cancelled for an amount equal to (i) the excess of (A) the aggregate Fair Market Value of the Class A Units underlying such portion of the Option as of the date of termination of the Participant's Employment, over (B) the aggregate

Option Price of such portion of the Option, or, if lesser, (ii) the excess of (A) the aggregate Fair Market Value of the Class A Units underlying such portion of the Option as of the Final Determination Date, over (B) the aggregate Option Price of such portion of the Option; provided, that, in the event that the Participant violates any Restrictive Covenant, such portion of the Option shall be automatically terminated and cancelled effective on the date of such violation without payment or consideration therefor.

- (f) Notwithstanding anything to the contrary in Section 7.9(c)(i) of the LLC Agreement, in the event that the Participant resigns without Good Reason on or after the fifth anniversary of the Date of Grant, the Repurchase Price (as defined in the LLC Agreement) shall be the Deemed Liquidation Value (as defined in the LLC Agreement) of the Participant's Repurchase Securities (as defined in the LLC Agreement).
 - (g) Subject to Section 2(e) hereof, upon termination of the Participant's Employment, the Unvested Portion of the Option shall automatically be cancelled without payment of consideration therefor, and the Vested Portion of the Option shall remain exercisable for the period set forth in Section 4(a) (other than as described in Section 2(d)). Subject to Section 2(e) hereof, upon termination of the Participant's Employment, the Participant, by the Participant's execution of this Agreement, shall be deemed to have (i) agreed that the Unvested Portion of the Option shall be forfeited as of the time of termination, and shall not vest during any severance period or common law reasonable notice of termination, regardless of the reason for termination including, without limitation, a termination of the Participant's Employment without Cause, and (ii) irrevocably waived any and all rights to a claim for such Class A Units subject to the Option or other compensation in lieu of such Class A Units subject to the Option.
 - (h) Subject to Section 2(e) hereof, on the Final Determination Date, any Unvested Portion shall be automatically cancelled effective on the Final Determination Date without payment or consideration therefor.
 - (i) Notwithstanding anything to the contrary in this Agreement, the amount of distributed proceeds relating to the sale-leaseback transaction, as described in the Purchase and Sale Agreement, dated as of November 24, 2014, by and among Portillo's Hot Dogs, LLC, Richport Holdings, LLC, Portillo's Food Service, LLC and Richport Property, LLC, shall be excluded from the "Berkshire Equity Investment" and "Proceeds" for purposes of the calculation of the Performance Condition set forth in Section 2(b)(v) above.
3. Definitions. As used herein, the following terms shall have the meanings set forth below:
- (a) "Acquired Class A Units" shall mean the aggregate number of Class A Units in the capital of the Company acquired by members of the Berkshire Owner Group on or prior to the time of any determination on any Determination Date, or any other securities or equity interests into which such units shall be converted or exchanged pursuant to an amalgamation, arrangement, merger, business combination, recapitalization or other transaction, without giving effect to any reduction resulting from any Common Sale or Sale Transaction.
 - (b) "Berkshire Equity Investment" shall mean, at any Determination Date, the aggregate consideration paid by the members of the Berkshire Owner Group to acquire the Acquired Class A Units, or in respect of the Acquired Class A Units in the form of a capital contribution or otherwise, from time to time, without giving effect to any reduction resulting from any Common Sale or Sale Transaction.

- (c) “Common Sale” shall mean one or more transactions in which any member of the Berkshire Owner Group, directly or indirectly, sells or otherwise transfers for value, or causes to be sold or transferred for value, the direct or indirect beneficial ownership of any or all of the Acquired Class A Units to any Person other than to any other member of the Berkshire Owner Group.
- (d) “Internal Rate of Return” shall mean an annual pre-tax internal rate of return calculated on a basis consistent with that used by the members of the Berkshire Owner Group in calculating gross internal rate of return for their respective purposes and by taking into account (i) the date or dates of payment by the members of the Berkshire Owner Group for or in respect of securities in the Company Group, (ii) the date or dates on which the members of the Berkshire Owner Group receive or are deemed to have received Proceeds, and (iii) the amounts of such Proceeds.
- (e) “IRR Percentage” shall mean:
- (i) if the Internal Rate of Return is less than 20%, then the IRR Percentage is 0%;
 - (ii) if the Internal Rate of Return is greater than or equal to 20% and less than 25%, then the IRR Percentage is (x) the difference between the Internal Rate of Return and 20% (which difference is expressed as a percentage), *divided by* (y) 5%; and
 - (iii) if the Internal Rate of Return is greater than or equal to 25%, then the IRR Percentage is 100%.
- (f) “Proceeds” shall mean the sum of (i) the actual net proceeds received by members of the Berkshire Owner Group for Acquired Class A Units in all Common Sales and Sale Transactions after deducting all Unreimbursed Expenses, and (ii) any distributions, reduced by the amount of any taxes paid by the Blocker Corporation (as defined in the LLC Agreement) which are attributable to income and gain allocated to the Blocker Corporation by the Company, received by any member of the Berkshire Owner Group in respect of the Acquired Class A Units; provided, that, in no event shall “Proceeds” include the receipt by any member of the Berkshire Owner Group of (A) closing fees, investment banking fees, or similar fees, and (B) any expenses or other reimbursements and fees under any advisory services agreement, management agreement or otherwise including, without limitation, any indemnification payments. For purposes of this definition, all non-cash proceeds received by any member of the Berkshire Owner Group shall be valued at the Fair Market Value of such proceeds; provided, that, escrows, purchase price adjustments, and any other forms of contingent consideration shall not be treated as Proceeds until reduced to cash.
- (g) “Unreimbursed Expenses” shall mean unreimbursed expenses incurred or to be incurred by any member of the Berkshire Owner Group in connection with such Common Sale and/or Sale Transaction, including all costs, expenses and fees of third-party advisors, including accountants, lawyers, consultants and financial advisors.

4. Exercise of Option.

(a) Period of Exercise.

- (i) Subject to Sections 4(a)(ii) through (iii), the Participant may exercise all or any part of the Vested Portion at any time prior to the tenth (10th) anniversary of the Date of Grant.
- (ii) In the case of termination of the Participant's Employment due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant (or the Participant's heir or legatee, if applicable) may exercise all or any part of the Vested Portion at any time prior to the earliest to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the one hundred eightieth (180th) day following the date of Participant's termination of Employment due to death or Disability, as applicable.
- (iii) In the case of termination of the Participant's Employment for any reason other than as described in Section 2(d), or due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant may exercise all or any part of the Vested Portion at any time prior to the earlier to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the ninetieth (90th) day following the date of termination.

(b) Method of Exercise.

- (i) Subject to Section 4(a), the Vested Portion of the Option may be exercised by delivering to the Company at its principal office a properly completed exercise notice in the form attached hereto as Exhibit A, which shall specify the number of Class A Units for which the Option is being exercised (the "Purchased Class A Units"). The exercise notice shall be accompanied by payment in full of the Option Price made by cash or check, at the election of the Participant, or by such other means as are permitted by the Administrator in its sole discretion. The Participant shall not have any rights to distributions or other rights of a unitholder with respect to Class A Units subject to the Option until the Participant has submitted to the Company a properly completed exercise notice and paid in full for such Class A Units, satisfied any applicable withholding requirements and, if applicable, satisfied any other conditions imposed by the Administrator or pursuant to the Plan or this Agreement.
- (ii) Upon the Administrator's determination that the Option has been validly exercised as to any of the Purchased Class A Units, that the Participant has paid in full for such Purchased Class A Units as provided for in Section 4(b)(i) hereof, and that the Participant has satisfied any applicable withholding requirements with respect to such Purchased Class A Units, the Company shall issue certificates in the Participant's name for such Purchased Class A Units.
- (iii) As a condition to the exercise of the Option, the Participant shall execute a joinder Agreement pursuant to which the Participant shall become fully bound by the terms set forth in the LLC Agreement, unless the Administrator determines otherwise or unless the Participant is already a party to the LLC Agreement.

- (iv) Each married Participant shall obtain the consent of such Participant's spouse to evidence such spouse's consent to be bound by the terms and conditions of this Agreement and the LLC Agreement as to their interest, whether as community property or otherwise, if any, in the Class A Units owned by such Participant.
- (c) Section 83(b) Election Required. As a condition subsequent to the issuance of Class A Units upon exercise of the Option, within thirty (30) days following such exercise, the Participant shall make an election pursuant to Section 83(b) of the Code, substantially in the form attached hereto as Exhibit B, concerning such issued Class A Units and shall be required to file promptly a copy of such election with the Company.

5. Restrictive Covenants.

- (a) Confidentiality. The Participant recognizes that the services to be performed by the Participant as an employee of the Company are special, unique and extraordinary in that, by reason of the Participant's Employment, the Participant will acquire, certain Confidential Information of the Company or its Affiliates, the use or disclosure of which could cause the Company or its Affiliates substantial losses and damages which could not be readily calculated and for which no remedy at law would be adequate. In consideration of the Option granted to the Participant hereunder, from the Date of Grant and at all times thereafter, the Participant shall maintain in strict confidence and not disclose to third parties or use in any task, work or business (except on behalf of the Company) any proprietary or Confidential Information regarding the Company and/or the Participant's work with the Company, including without limitation, methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary information ("Confidential Information"). The Participant and the Company acknowledge that the Company would not grant the Option hereunder or provide the Participant with access to its Confidential Information without the covenants and promises contained in this paragraph. Notwithstanding the foregoing restrictions, the Participant may disclose any Confidential Information to the extent required by an order of any court or other governmental authority, but in each case only after the Company has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- (b) Intellectual Property. If the Participant has created, invented, designed, developed, contributed to or improved any works of authorship, inventions, intellectual property, materials, documents or other work product (including without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) ("Works"), either alone or with third parties, prior to the Participant's Employment with the Company, that are relevant to or implicated by such Employment ("Prior Works"), the Participant hereby grants the Company a perpetual, non-exclusive, royalty-free, worldwide, assignable, sublicensable license under all rights and intellectual property rights (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) therein for all purposes in connection with the Company's current and future business. If the Participant creates, invents, designs, develops, contributes to or improves any Works, either alone or with third parties, at any time during the Participant's Employment with the Company and within the scope of such Employment and/or with the use of any Company resources ("Company Works"), the Participant shall promptly and fully

disclose such works to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. The Participant agrees to keep and maintain adequate and current written records (in the form of notes, sketches, drawings, and any other form or media requested by the Company) of all Company Works. The records will be available to and remain the sole property and intellectual property of the Company at all times. The Participant shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company's expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company's rights in the Prior Works and Company Works. If the Company is unable for any other reason to secure the Participant's signature on any document for this purpose, then the Participant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as the Participant's agent and attorney-in-fact, to act for and on the Participant's behalf to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

- (c) Non-Solicitation. Participant covenants and agrees that during employment and for a period of two (2) years commencing with the date of Participant's termination of employment with the Company (the "Restriction Period"), Participant shall not directly or indirectly (i) influence or attempt to influence or solicit any employees, or independent contractors of the Company or any of its Affiliates to restrict, reduce, sever or otherwise alter their relationship with the Company or such Affiliates or assist any other person to do so, (ii) hire any employees, or independent contractors of the Company or any of its Affiliates or assist any other person in doing so, (iii) solicit or induce, or attempt to solicit or induce, any person or entity that is (x) then a customer of the Company or any of its Affiliates to cease being a customer of the Company or any of its Affiliates or (y) a prospective customer of the Company or any of its Affiliates with which the Participant had contact with to become a customer, or in each case of (x) and (y), to divert all or any part of any such person's or entity's business from the Company or any of its Affiliates (for the avoidance of doubt, in each case of, (x) and (y) "customer" is not intended to include individual retail customers), or (iv) assist any other person or entity in any way to do, or attempt to do, anything prohibited by Sections 4(c)(i), (ii) or (iii).
- (d) Non-Competition. Participant hereby acknowledges and agrees that during the Restricted Period, Participant shall not, directly or indirectly, be employed by or otherwise provide services for, including, but not limited to, as a consultant, independent contractor or in any other capacity, or own or invest in (other than ownership for investment purposes of less than two percent (2%) of a publicly traded company) any company or other entity or organization that, directly or indirectly, engages in the preparation, licensing and/or sale of (i) hot dogs, (ii) chili, (iii) Italian beef sandwiches, (iv) hamburgers, (v) chicken sandwiches, (vi) Italian sausage, (vii) ribs and/or (viii) salads in the fast casual restaurant industry, the catering industry, the grocery industry or the internet food sales industry.

- (e) **Survival.** It is the desire and intent of the parties to this option Agreement that the provisions of this Section 5 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provisions or portion of this Section 5 shall be adjudicated to be invalid or unenforceable, this Section 5 shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such amendment to apply only with respect to the operation of such Section in the particular jurisdiction in which such adjudication is made.
- (f) Participant acknowledges and agrees that the restrictive covenants contained in this Section 5 are in consideration of the promises and covenants contained in this Agreement, including but not limited to the grant of the Option pursuant to the terms of this Agreement and the Plan, the provision to Participant of access to the Company's goodwill and Confidential Information, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Participant.
- (g) The parties recognize that the performance of the obligations under this Section 5 by the Participant is special, unique and extraordinary in character, and that in the event of the breach by the Participant of the terms and conditions of this Section 5 to be performed by Participant, the Company shall be entitled, if it so elects, to obtain damages for any breach of this Section 5 or to enforce the specific performance thereof by the Participant.
6. **Withholding.** Whenever Purchased Class A Units are to be issued, the Administrator shall have the right to require the Participant to remit to the Company cash sufficient to satisfy all federal, state and local withholding tax requirements prior to issuance of the Purchased Class A Units and the delivery of any certificate or certificates for such Purchased Class A Units. The Administrator shall also have the right to withhold from any issuance of Purchased Class A Units or other amounts payable to a Participant hereunder such amount as is necessary to satisfy any withholding obligations.
7. **Non-transferability of Option.** The Option and the Participant's other rights and obligations under the Plan and this Agreement may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its Affiliates; provided, that, the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. No such permitted transfer of the Option to heirs or legatees of the Participant shall be effective to bind the Company or any of its Affiliates unless the Administrator shall have been furnished with written notice thereof and a copy of such evidence as the Administrator may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions hereof. During the Participant's lifetime, the Option is exercisable only by the Participant.
8. **Effect on Employment.** Neither the granting of the Option evidenced hereby, nor the issuance of Class A Units upon exercise of this Option, nor this Agreement shall impose any obligation on the Company or its Affiliates to continue the Employment of the Participant, nor shall it lessen or affect the Company's or its Affiliates' rights to terminate the Employment of such Participant at any time or discipline such Participant at any time.

9. Legend on Certificates. If the Purchased Class A Units are certificated, such certifications shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan or the rules, regulations, and other requirements of the Securities and Exchange Commission or other securities regulatory authority, or any stock exchange upon which such Purchased Class A Units are listed, and any applicable federal or state laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.
10. Securities Laws. Upon the acquisition of any Purchased Class A Units, the Participant will make or enter into such written representations, warranties and agreements as the Administrator may reasonably request in order to comply with applicable securities laws or with this Agreement.
11. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
12. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered in the manner specified herein or, in the absence of such specification, shall be deemed to have been duly given when delivered by hand, upon electronic confirmation of receipt by email, or one (1) business day after sending by nationally reputable overnight delivery service, to the respective addresses of the parties set forth below:

For notices and communications to the Company to:

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

Berkshire Partners LLC

Attention:

Email:

and a further copy (which alone shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attention: Michael Nissan

Email: michael.nissan@weil.com

Weil, Gotshal & Manges LLP

100 Federal Street

Boston, MA 02110

Attention: Shayla Harlev

Email: Shayla.Harlev@weil.com

and to the Participant at the address appearing in the most recent personnel records of the Company or an Affiliate, as applicable, for the Participant or to either party hereto at such other address as either party may hereafter designate in writing to the other.

13. Choice of Law. This Agreement (including, without limitation, the validity, construction, effect or performance hereof or thereof and any remedies hereunder or thereunder or related hereto or thereto) and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution, performance or breach of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provisions (whether Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
14. Option Subject to Plan. By entering into this Agreement, the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan. The Option is subject to the Plan. The terms and provisions of the Plan, as it may be amended from time to time, are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.
15. Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
16. Headings. All headings and captions in this Agreement are for purposes of reference only and shall not be construed to limit or affect the substance of this Agreement.
17. Entire Agreement. This Agreement, together with the Exhibits hereto, the 2014 PHD Group Holdings LLC Equity Incentive Plan and the LLC Agreement, set forth the entire understanding of the parties, and as of the Date of Grant supersede all prior agreements and all other arrangements and communications, whether oral or written, with respect to the subject matter hereof and thereof; provided, however, that this Section 17 is not intended to and shall not supersede any Restrictive Covenants, and such Restrictive Covenants shall also remain in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Date of Grant.

PHD GROUP HOLDINGS LLC

Per: _____

Name:

Title:

Agreed and acknowledged
as of the Date of Grant:

(name)

EXHIBIT A

Class A Unit Option Plan Exercise Notice Form

I, _____ hereby exercise the Option to purchase _____ class A units (“**Class A Units**”) of PHD Group Holdings LLC, a Delaware Limited Liability Company (the “**Company**”) at a purchase price of \$_____ per Class A Unit. This Exercise Notice is delivered in respect of the Option to purchase _____ Class A Units of the Company that was granted to me on _____ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a check, or evidence of a wire transfer payable to the Company in the amount of \$_____ as full payment for the Class A Unit to be received upon exercise of the Option.

Date

Participant’s Signature

EXHIBIT B

FORM OF 83(b) ELECTION

Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: _____

TAXPAYER'S SOCIAL SECURITY NUMBER: _____

ADDRESS: _____

TAXABLE YEAR: Calendar Year 20__

2. The property which is the subject of this election is _____ units of Class A Common Units of PHD Group Holdings LLC.

3. The property was transferred to the undersigned on **[Insert date of exercise of Option]**.

4. The property is subject to the following restrictions: The Class A Units may be repurchased by PHD Group Holdings LLC in connection with the termination of employment in the amount equal to either (i) the lower of cost or fair market value in the case of a termination for Cause or a resignation without Good Reason prior to the fifth anniversary of the date of grant or (ii) the fair market value in the case of any other termination, including resignation without Good Reason on or after the fifth anniversary of the date of grant.

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$_____ per unit x _____ units = \$_____.

6. For the property transferred, the undersigned paid \$_____ per unit x _____ units = \$_____.

7. The amount to include in gross income is \$_____. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: _____

Taxpayer

PHD GROUP HOLDINGS LLC
2014 EQUITY INCENTIVE PLAN
CLASS A UNIT OPTION AGREEMENT
(Time Vesting)

This Option is granted by PHD Group Holdings LLC, a Delaware limited liability company (the “Company”), to [**Name of Participant**] (the “Participant”), pursuant to this Class A Unit option agreement (the “Agreement”) and the Company’s 2014 Equity Incentive Plan (the “Plan”). All capitalized terms not otherwise defined herein shall have the meaning provided in the Plan.

1. Grant of Option. The Company hereby grants to the Participant, on [**date**] (the “Date of Grant”) an Option to purchase, in whole or in part, on the terms provided herein and in the Plan a total of [**•**] Class A Units, subject to adjustment as set forth in the Plan. The exercise price of the Option shall be [**\$•**]¹ per Class A Unit (the “Option Price”) which is not less than the Fair Market Value of the Class A Units as of the Date of Grant. The Option is granted pursuant to and is governed in all respects by the Plan. The term “Reference Date” as used herein shall mean [**date**].
2. Vesting; Termination of Employment.
 - (a) Subject to the earlier termination or cancellation of the Option as set forth herein or in the Plan, the Option shall be eligible to vest and become exercisable with respect to twenty percent (20%) of the Class A Units subject to the Option on each of the first, second, third, fourth and fifth anniversaries of the Reference Date, such that the Option shall be vested and exercisable with respect to 100% of the Class A Units subject to the Option on the fifth anniversary of the Reference Date.
 - (b) In the event of a Sale Transaction, the Units subject to the Option shall be deemed to be fully vested and exercisable with respect to 100% of the Class A Units subject to the Option.
 - (c) The portion of the Option that has become vested and exercisable in accordance with the terms of this Section 2 is hereinafter referred to as the “Vested Portion”. The portion of the Option that is not a Vested Portion shall be referred to as the “Unvested Portion”.
 - (d) If (i) the Participant’s Employment is terminated (A) for Cause, (B) due to the Participant’s resignation after an inquiry by the Board as to the existence of Cause has been initiated and the Board determines that Cause existed as of the date of such resignation, or (C) due to the Participant’s resignation at a time when Participant has committed acts or omissions that would constitute Cause, (ii) the Participant’s Employment is terminated due to the Participant’s resignation other than for Good Reason prior to the fifth anniversary of the Reference Date, or (iii) the Participant violates any Restrictive Covenant, then both the Vested Portion and Unvested Portion shall be automatically terminated and cancelled effective on the earliest of the date the Participant’s Employment is terminated for Cause or due to the Participant’s resignation other than for Good Reason, or the date the act or omission constituting Cause or a violation of any Restrictive Covenant is determined to have occurred, as applicable, without payment of consideration therefor.

¹ Will be FMV (initially \$1 per Class A Unit).

- (e) Upon termination of the Participant's Employment, the Unvested Portion of the Option shall automatically be cancelled without payment of consideration therefor, and the Vested Portion of the Option shall remain exercisable for the period set forth in Section 3(a) (other than as described in Section 2(d)). Upon termination of the Participant's Employment, the Participant, by the Participant's execution of this Agreement, shall be deemed to have (i) agreed that the Unvested Portion of the Option shall be forfeited as of the time of termination, and shall not vest during any severance period or common law reasonable notice of termination, regardless of the reason for termination including, without limitation, a termination of the Participant's Employment without Cause, and (ii) irrevocably waived any and all rights to a claim for such Class A Units subject to the Option or other compensation in lieu of such Class A Units subject to the Option.
- (f) Notwithstanding anything to the contrary in Section 7.9(c)(i) of the LLC Agreement, in the event that the Participant resigns without Good Reason on or after the fifth anniversary of the Reference Date, the Repurchase Price (as defined in the LLC Agreement) shall be the Deemed Liquidation Value (as defined in the LLC Agreement) of the Participant's Repurchase Securities (as defined in the LLC Agreement).

3. Exercise of Option.

(a) Period of Exercise.

- (i) Subject to Sections 3(a)(ii) and (iii), the Participant may exercise all or any part of the Vested Portion at any time prior to the tenth (10th) anniversary of the Date of Grant.
- (ii) In the case of termination of the Participant's Employment due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant (or the Participant's heir or legatee, if applicable) may exercise all or any part of the Vested Portion at any time prior to the earliest to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the one hundred eightieth (180th) day following the date of Participant's termination of Employment due to death or Disability, as applicable.
- (iii) In the case of termination of the Participant's Employment for any reason other than as described in Section 2(d), or due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant may exercise all or any part of the Vested Portion of the Option at any time prior to the earlier to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the ninetieth (90th) day following the date of termination.

(b) Method of Exercise.

- (i) Subject to Section 3(a), the Vested Portion of the Option may be exercised by delivering to the Company at its principal office a properly completed exercise notice in the form attached hereto as Exhibit A, which shall specify the number of Class A Units for which the Option is being exercised (the "Purchased Class A Units"). The exercise notice shall be accompanied by payment in full of the Option Price made by cash or check, at the election of the Participant, or by such other means as are permitted by the Administrator in its sole discretion. The Participant shall not have any rights to distributions or other rights of a unitholder with respect to Class A Units subject to the Option until the Participant has submitted to the Company a properly completed exercise notice and paid in full for such Class A Units, satisfied any applicable withholding requirements and, if applicable, satisfied any other conditions imposed by the Administrator or pursuant to the Plan or this Agreement or the LLC Agreement.
 - (ii) Upon the Administrator's determination that the Option has been validly exercised as to any of the Purchased Class A Units, that the Participant has paid in full for such Purchased Class A Units as provided for in Section 3(b)(i) hereof, and that the Participant has satisfied any applicable withholding requirements with respect to such Purchased Class A Units, the Company may, but shall not be required to issue certificates in the Participant's name for such Purchased Class A Units.
 - (iii) As a condition to the exercise of the Option, the Participant shall execute a joinder agreement pursuant to which the Participant shall become fully bound by the terms set forth in the LLC Agreement, unless the Administrator determines otherwise or unless the Participant is already a party to the LLC Agreement.
 - (iv) Each married Participant shall obtain the consent of such Participant's spouse to evidence such spouse's consent to be bound by the terms and conditions of this Agreement and the LLC Agreement as to their interest, whether as community property or otherwise, if any, in the Class A Units owned by such Participant.
- (c) Section 83(b) Election Required. As a condition subsequent to the issuance of Class A Units upon exercise of the Option, within thirty (30) days following such exercise, the Participant shall make an election pursuant to Section 83(b) of the Code, substantially in the form attached hereto as Exhibit B, concerning such issued Class A Units and shall be required to file promptly a copy of such election with the Company.

4. Restrictive Covenants.

- (a) Confidentiality. The Participant recognizes that the services to be performed by the Participant are special, unique and extraordinary in that, by reason of the Participant's Employment, the Participant will acquire, certain Confidential Information of the Company or its Affiliates, the use or disclosure of which could cause the Company or its Affiliates substantial losses and damages which could not be readily calculated and for which no remedy at law would be adequate. In consideration of the Option granted to the Participant hereunder, from the Date of Grant and at all times thereafter, the Participant shall maintain in strict confidence and not disclose to third parties or use in any task, work or business (except on behalf of the Company) any proprietary or Confidential Information regarding the Company and/or the Participant's work with the Company, including without limitation, methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized

information or proprietary matters (“Confidential Information”). The Participant and the Company acknowledge that the Company would not grant the Option hereunder or provide the Participant with access to its Confidential Information without the covenants and promises contained in this paragraph. Notwithstanding the foregoing restrictions, the Participant may disclose any Confidential Information to the extent required by an order of any court or other governmental authority, but in each case only after the Company has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- (b) Survival. It is the desire and intent of the parties to this option Agreement that the provisions of this Section 4 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provisions or portion of this Section 4 shall be adjudicated to be invalid or unenforceable, this Section 4 shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such amendment to apply only with respect to the operation of such Section in the particular jurisdiction in which such adjudication is made.
 - (c) Participant acknowledges and agrees that the restrictive covenants contained in this Section 4 are in consideration of the promises and covenants contained in this Agreement, including but not limited to the grant of the Option pursuant to the terms of this Agreement and the Plan, the provision to Participant of access to the Company’s goodwill and Confidential Information, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Participant.
 - (d) The parties recognize that the performance of the obligations under this Section 4 by the Participant is special, unique and extraordinary in character, and that in the event of the breach by the Participant of the terms and conditions of this Section 4 to be performed by Participant, the Company shall be entitled, if it so elects, to obtain damages for any breach of this Section 4 or to enforce the specific performance thereof by the Participant.
5. Withholding. Whenever Purchased Class A Units are to be issued, the Administrator shall have the right to require the Participant to remit to the Company cash sufficient to satisfy all federal, state and local withholding tax requirements prior to issuance of the Purchased Class A Units and the delivery of any certificate or certificates for such Purchased Class A Units. The Administrator shall also have the right to withhold from any issuance of Purchased Class A Units or other amounts payable to a Participant hereunder such amount as is necessary to satisfy any withholding obligations.
6. Non-transferability of Option. The Option and the Participant’s other rights and obligations under the Plan and this Agreement may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its Affiliates; provided, that, the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. No such permitted transfer of the Option to heirs or legatees of the Participant shall be effective to bind the Company or any of its Affiliates unless the Administrator shall have been furnished with written notice thereof and a copy of such evidence as the Administrator may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions hereof. During the Participant’s lifetime, the Unit Option is exercisable only by the Participant.

7. Effect on Employment. Neither the granting of the Option evidenced hereby, nor the issuance of Class A Units upon exercise of this Option, nor this Agreement shall impose any obligation on the Company or its Affiliates to continue the Employment of the Participant, nor shall it lessen or affect the Company's or its Affiliates' rights to terminate the Employment of such Participant at any time or discipline such Participant at any time.
8. Legend on Certificates. If the Purchased Class A Units are certificated, such certificates shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan or the rules, regulations, and other requirements of the Securities and Exchange Commission or other securities regulatory authority, or any stock exchange upon which such Purchased Class A Units are listed, and any applicable federal or state laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.
9. Securities Laws. Upon the acquisition of any Purchased Class A Units, the Participant will make or enter into such written representations, warranties and agreements as the Administrator may reasonably request in order to comply with applicable securities laws or with this Agreement.
10. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered in the manner specified herein or, in the absence of such specification, shall be deemed to have been duly given when delivered by hand, upon electronic confirmation of receipt by email, or one (1) business day after sending by nationally reputable overnight delivery service, to the respective addresses of the parties set forth below:

For notices and communications to the Company to:

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

Berkshire Partners LLC

Attention:

Email:

and a further copy (which alone shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Michael Nissan
Email: michael.nissan@weil.com

Weil, Gotshal & Manges LLP
100 Federal Street
34th Floor
Boston, MA 02110
Attention: Shayla Harlev
Email: Shayla.Harlev@weil.com

and to the Participant at the address appearing in the most recent personnel records of the Company or an Affiliate, as applicable, for the Participant or to either party hereto at such other address as either party may hereafter designate in writing to the other.

12. Choice of Law. This Agreement (including, without limitation, the validity, construction, effect or performance hereof or thereof and any remedies hereunder or thereunder or related hereto or thereto) and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution, performance or breach of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provisions (whether Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
13. Option Subject to Plan. By entering into this Agreement, the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan. The Option is subject to the Plan. The terms and provisions of the Plan, as it may be amended from time to time, are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.
14. Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
15. Headings. All headings and captions in this Agreement are for purposes of reference only and shall not be construed to limit or affect the substance of this Agreement.
16. Entire Agreement. This Agreement, together with the Exhibits hereto, the 2014 PHD Group Holdings LLC Equity Incentive Plan and the LLC Agreement, set forth the entire understanding of the parties, and as of the Date of Grant supersede all prior agreements and all other arrangements and communications, whether oral or written, with respect to the subject matter hereof and thereof; provided, however, that this Section 16 is not intended to and shall not supersede any Restrictive Covenants, and such Restrictive Covenants shall also remain in full force and effect pursuant to the terms thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Date of Grant.

PHD GROUP HOLDINGS LLC

Per:

Name:

Title:

Agreed and acknowledged
as of the Date of Grant:

(name)

EXHIBIT A

I, _____ hereby exercise the Option to purchase _____ class A units ("Class A Units") of PHD Group Holdings LLC, (the "Company") at a purchase price of \$_____ per Class A Unit. This Exercise Notice is delivered in respect of the Option to purchase _____ Class A Units of the Company that was granted to me on _____ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a check, or evidence of a wire transfer payable to the Company in the amount of \$_____ as full payment for the Class A Units to be received upon exercise of the Option.

Date

Participant's Signature

EXHIBIT B

FORM OF 83(b) ELECTION

Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: _____

TAXPAYER'S SOCIAL SECURITY NUMBER: _____

ADDRESS: _____

TAXABLE YEAR: Calendar Year 20__

2. The property which is the subject of this election is _____ units of Class A Common Units of PHD Group Holdings LLC.

3. The property was transferred to the undersigned on **[Insert date of exercise of Option]**.

4. The property is subject to the following restrictions: The Class A Units may be repurchased by PHD Group Holdings LLC in connection with the termination of employment in the amount equal to either (i) the lower of cost or fair market value in the case of a termination for Cause or a resignation without Good Reason prior to the fifth anniversary of the reference date set forth in the award agreement or (ii) the fair market value in the case of any other termination, including resignation without Good Reason on or after the fifth anniversary of the reference date set forth in the award agreement.

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$_____ per unit x _____ units = \$_____.

6. For the property transferred, the undersigned paid \$_____ per unit x _____ units = \$_____.

7. The amount to include in gross income is \$_____. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: _____

Taxpayer

**PHD GROUP HOLDINGS LLC
2014 EQUITY INCENTIVE PLAN**

**CLASS A UNIT OPTION AGREEMENT
(TIME AND PERFORMANCE VESTING)**

This Option is granted by PHD Group Holdings LLC, a Delaware limited liability company (the “Company”), to [**Name of Participant**] (the “Participant”), pursuant to this Class A Unit option agreement (the “Agreement”) and the Company’s 2014 Equity Incentive Plan (the “Plan”). All capitalized terms not otherwise defined herein shall have the meaning provided in the Plan.

1. Grant of Option. The Company hereby grants to the Participant, on [**date**] (the “Date of Grant”), the right and option to purchase, in whole or in part, on the terms provided herein and in the Plan, a total of [**•**] Class A Units, subject to adjustment as set forth in the Plan. The exercise price of the Option shall be [**\$•**]1 per Class A Unit (the “Option Price”), which is not less than the Fair Market Value of the Class A Units on the Date of Grant. The Option is granted pursuant to and is governed in all respects by the Plan. The term “Reference Date” as used herein shall mean [**date**].
2. Vesting; Termination of Employment.
 - (a) Subject to the earlier termination or cancellation of the Option as set forth herein or in the Plan, the Option shall be eligible to vest and become exercisable under Section 2(b) hereof upon achievement of the time-vesting condition described in this Section 2(a) (the “Time Condition”).
 - (i) The Time Condition shall be achieved with respect to twenty percent (20%) of the Class A Units subject to the Option on each of the first, second, third, fourth and fifth anniversaries of the Reference Date, such that the Time Condition shall be achieved with respect to 100% of the Class A Units subject to Option on the fifth anniversary of the Reference Date.
 - (ii) In the event of a Sale Transaction, the Class A Units subject to the Option, to the extent they have not then met the Time Condition, shall be deemed to have met the Time Condition with respect to 100% of the Class A Units subject to the Option.
 - (b) Any Class A Units subject to the Option shall vest and become exercisable as follows:
 - (i) On each date that members of the Berkshire Owner Group receive Proceeds (each such date, a “Determination Date”), a determination shall be made as to whether any portion of the Option is vested and exercisable with respect to a number of Class A Units. The final Determination Date of all such determinations shall be (A) a Common Sale (other than upon or after an IPO) or Sale Transaction, in any case, after which the Berkshire Owner Group holds less than ten percent (10%) of the Acquired Class A Units or (B) that date which is thirty (30) consecutive trading days following the date on which all of the Acquired Class A Units become freely tradable after an IPO and no restrictions exist (due to any Market Limitation, contract or other restriction at law) that

1 Will be FMV

would prohibit or limit the Acquired Class A Units from being sold in the public markets after an IPO (such date, the “Final Determination Date”). For purposes of this Agreement, “Market Limitation” means insufficient trading liquidity for Acquired Class A Units to be efficiently sold through the principal securities exchange or market on which the Class A Units are listed or posted for trading or quoted, which will be deemed to exist if the average monthly trading volume of the Class A Units is less than two (2) times the average number of Acquired Class A Units outstanding, each calculated as of the most recently ended month.

- (ii) Subject to Section 2(b)(v) hereof, if a Determination Date other than a Final Determination Date occurs, the portion of the Option that shall become vested and exercisable shall be in respect of the total number of Class A Units *multiplied by* the IRR Percentage (as defined below), where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment with the Proceeds for the purpose of determining such Internal Rate of Return being the Proceeds actually received by the Berkshire Owner Group on or prior to such Determination Date (including in the Common Sale or Sale Transaction triggering the Determination Date, and after giving effect to any dilution from the vesting of any Options outstanding under the Plan).
- (iii) Subject to Section 2(b)(v) hereof, if a Final Determination Date occurs as a result of an event set forth in Section 2(b)(i)(A), the portion of the Class A Units subject to the Option that shall become vested and exercisable shall be the total number of Class A Units *multiplied by* the IRR Percentage, where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment with the Proceeds for the purpose of determining such Internal Rate of Return being the sum of (A) the Proceeds actually received by the Berkshire Owner Group on or prior to such Final Determination Date (including in the Common Sale or Sale Transaction triggering the Final Determination Date, and after giving effect to any dilution from the vesting of any Options outstanding under the Plan) and (B) the Fair Market Value of the retained Acquired Class A Units as if such Acquired Class A Units were sold for cash.
- (iv) Subject to Section 2(b)(v) hereof, if a Final Determination Date occurs as the result of an event set forth in Section 2(b)(i)(B), the portion of the Class A Units subject to the Option that shall become vested and exercisable shall be the total number of Class A Units *multiplied by* the IRR Percentage, where the Internal Rate of Return used to calculate such IRR Percentage is the overall aggregate Internal Rate of Return on the total amount of the Berkshire Equity Investment, with the Proceeds for the purpose of determining such Internal Rate of Return being equal to the sum of (A) (x) the total number of Acquired Class A Units then held immediately after giving effect to the applicable transactions triggering such Final Determination Date *multiplied by* (y) the average closing bid price of the Class A Units as reported on the principal securities exchange in the United States and/or Canada on which such Class A Units are listed or posted for trading or as quoted on Nasdaq, for the thirty (30) consecutive trading days commencing on the date following the date on which such Class A Units becomes freely tradable and no restrictions (due to any Market Limitation, contract or other

restriction at law) exist which prohibit or limit the Acquired Class A Units from being sold to the public (the “Average Closing Price”), *plus* (B) the aggregate Proceeds actually received by the Berkshire Owner Group on or prior to such Final Determination Date (including in the Common Sale or Sale Transaction triggering the Final Determination Date, and, in each case, after giving effect to any dilution from the vesting of any Options outstanding under the Plan).

- (v) Notwithstanding the foregoing, no portion of the Class A Units subject to the Option shall become vested and exercisable under this Section 2 unless upon the applicable Determination Date the Berkshire Owner Group has received on or prior to such Determination Date aggregate Proceeds equal to or greater than two times (2.0x) the aggregate amount of the Berkshire Equity Investment, and for greater certainty, (1) in the case of a Final Determination Date that occurs under Section 2(b)(i)(A), the aggregate Proceeds for the purposes of this Section 2 shall include the Fair Market Value of any retained Acquired Class A Units as if such Acquired Class A Units were sold for cash, and (2) in the case of a Final Determination Date that occurs under Section 2(b)(i)(B) the aggregate Proceeds for the purposes of this Section 2 shall include an amount equal to (A) the total number of Acquired Class A Units then held immediately after giving effect to the applicable transaction(s) triggering such Final Determination Date, *multiplied by* (B) the Average Closing Price as of such Final Determination Date.
- (vi) The conditions specified in clauses (ii)-(v) above are each referred to as a “Performance Condition”.
- (c) The portion of the Option that has satisfied the Time Condition and the applicable Performance Condition is hereinafter referred to as the “Vested Portion”. The portion of the Option that is not a Vested Portion shall be referred to as the “Unvested Portion”.
- (d) If (i) the Participant’s Employment is terminated (A) for Cause, (B) due to the Participant’s resignation after an inquiry by the Board as to the existence of Cause has been initiated and the Board determines that Cause existed as of the date of such resignation, or (C) due to the Participant’s resignation at a time when Participant has committed acts or omissions that would constitute Cause, (ii) the Participant’s Employment is terminated due to the Participant’s resignation other than for Good Reason prior to the fifth anniversary of the Reference Date, or (iii) the Participant violates any Restrictive Covenant, then both the Vested Portion and Unvested Portion shall be automatically terminated and cancelled effective on the earliest of the date the Participant’s Employment is terminated for Cause or due to the Participant’s resignation other than for Good Reason, or the date the act or omission constituting Cause or a violation of any Restrictive Covenant is determined to have occurred, as applicable, without payment of consideration therefor.
- (e) Upon termination of the Participant’s Employment due to the Participant’s death or Disability, without Cause, due to the Participant’s resignation for Good Reason, or due to the Participant’s resignation without Good Reason on or after the fifth anniversary of the Reference Date, the portion of the Option that has satisfied the Time Condition but not the applicable Performance Condition shall remain outstanding until the Final Determination Date. At the Final Determination Date, the portion of such Option that becomes exercisable shall be cancelled for an amount equal to (i) the excess of (A) the aggregate Fair Market Value of the Class A Units underlying such portion of the Option

as of the date of termination of the Participant's Employment, over (B) the aggregate Option Price of such portion of the Option, or, if lesser, (ii) the excess of (A) the aggregate Fair Market Value of the Class A Units underlying such portion of the Option as of the Final Determination Date, over (B) the aggregate Option Price of such portion of the Option; provided, that, in the event that the Participant violates any Restrictive Covenant, such portion of the Option shall be automatically terminated and cancelled effective on the date of such violation without payment or consideration therefor.

- (f) Notwithstanding anything to the contrary in Section 7.9(c)(i) of the LLC Agreement, in the event that the Participant resigns without Good Reason on or after the fifth anniversary of the Reference Date, the Repurchase Price (as defined in the LLC Agreement) shall be the Deemed Liquidation Value (as defined in the LLC Agreement) of the Participant's Repurchase Securities (as defined in the LLC Agreement).
 - (g) Subject to Section 2(e) hereof, upon termination of the Participant's Employment, the Unvested Portion of the Option shall automatically be cancelled without payment of consideration therefor, and the Vested Portion of the Option shall remain exercisable for the period set forth in Section 4(a) (other than as described in Section 2(d)). Subject to Section 2(e) hereof, upon termination of the Participant's Employment, the Participant, by the Participant's execution of this Agreement, shall be deemed to have (i) agreed that the Unvested Portion of the Option shall be forfeited as of the time of termination, and shall not vest during any severance period or common law reasonable notice of termination, regardless of the reason for termination including, without limitation, a termination of the Participant's Employment without Cause, and (ii) irrevocably waived any and all rights to a claim for such Class A Units subject to the Option or other compensation in lieu of such Class A Units subject to the Option.
 - (h) Subject to Section 2(e) hereof, on the Final Determination Date, any Unvested Portion shall be automatically cancelled effective on the Final Determination Date without payment or consideration therefor.
 - (i) Notwithstanding anything to the contrary in this Agreement, the amount of distributed proceeds relating to the sale-leaseback transaction, as described in the Purchase and Sale Agreement, dated as of November 24, 2014, by and among Portillo's Hot Dogs, LLC, Richport Holdings, LLC, Portillo's Food Service, LLC and Richport Property, LLC, shall be excluded from the "Berkshire Equity Investment" and "Proceeds" for purposes of the calculation of the Performance Condition set forth in Section 2(b)(v) above.
3. Definitions. As used herein, the following terms shall have the meanings set forth below:
- (a) "Acquired Class A Units" shall mean the aggregate number of Class A Units in the capital of the Company acquired by members of the Berkshire Owner Group on or prior to the time of any determination on any Determination Date, or any other securities or equity interests into which such units shall be converted or exchanged pursuant to an amalgamation, arrangement, merger, business combination, recapitalization or other transaction, without giving effect to any reduction resulting from any Common Sale or Sale Transaction.
 - (b) "Berkshire Equity Investment" shall mean, at any Determination Date, the aggregate consideration paid by the members of the Berkshire Owner Group to acquire the Acquired Class A Units, or in respect of the Acquired Class A Units in the form of a capital contribution or otherwise, from time to time, without giving effect to any reduction resulting from any Common Sale or Sale Transaction.

- (c) “Common Sale” shall mean one or more transactions in which any member of the Berkshire Owner Group, directly or indirectly, sells or otherwise transfers for value, or causes to be sold or transferred for value, the direct or indirect beneficial ownership of any or all of the Acquired Class A Units to any Person other than to any other member of the Berkshire Owner Group.
- (d) “Internal Rate of Return” shall mean an annual pre-tax internal rate of return calculated on a basis consistent with that used by the members of the Berkshire Owner Group in calculating gross internal rate of return for their respective purposes and by taking into account (i) the date or dates of payment by the members of the Berkshire Owner Group for or in respect of securities in the Company Group, (ii) the date or dates on which the members of the Berkshire Owner Group receive or are deemed to have received Proceeds, and (iii) the amounts of such Proceeds.
- (e) “IRR Percentage” shall mean:
- (i) if the Internal Rate of Return is less than 20%, then the IRR Percentage is 0%;
 - (ii) if the Internal Rate of Return is greater than or equal to 20% and less than 25%, then the IRR Percentage is (x) the difference between the Internal Rate of Return and 20% (which difference is expressed as a percentage), *divided by* (y) 5%; and
 - (iii) if the Internal Rate of Return is greater than or equal to 25%, then the IRR Percentage is 100%.
- (f) “Proceeds” shall mean the sum of (i) the actual net proceeds received by members of the Berkshire Owner Group for Acquired Class A Units in all Common Sales and Sale Transactions after deducting all Unreimbursed Expenses, and (ii) any distributions, reduced by the amount of any taxes paid by the Blocker Corporation (as defined in the LLC Agreement) which are attributable to income and gain allocated to the Blocker Corporation by the Company, received by any member of the Berkshire Owner Group in respect of the Acquired Class A Units; provided, that, in no event shall “Proceeds” include the receipt by any member of the Berkshire Owner Group of (A) closing fees, investment banking fees, or similar fees, and (B) any expenses or other reimbursements and fees under any advisory services agreement, management agreement or otherwise including, without limitation, any indemnification payments. For purposes of this definition, all non-cash proceeds received by any member of the Berkshire Owner Group shall be valued at the Fair Market Value of such proceeds; provided, that, escrows, purchase price adjustments, and any other forms of contingent consideration shall not be treated as Proceeds until reduced to cash.
- (g) “Unreimbursed Expenses” shall mean unreimbursed expenses incurred or to be incurred by any member of the Berkshire Owner Group in connection with such Common Sale and/or Sale Transaction, including all costs, expenses and fees of third-party advisors, including accountants, lawyers, consultants and financial advisors.

4. Exercise of Option.

(a) Period of Exercise.

- (i) Subject to Sections 4(a)(ii) through (iii), the Participant may exercise all or any part of the Vested Portion at any time prior to the tenth (10th) anniversary of the Date of Grant.
- (ii) In the case of termination of the Participant's Employment due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant (or the Participant's heir or legatee, if applicable) may exercise all or any part of the Vested Portion at any time prior to the earliest to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the one hundred eightieth (180th) day following the date of Participant's termination of Employment due to death or Disability, as applicable.
- (iii) In the case of termination of the Participant's Employment for any reason other than as described in Section 2(d), or due to the Participant's death or Disability, subject to any provisions of the Plan and this Agreement to the contrary, the Participant may exercise all or any part of the Vested Portion at any time prior to the earlier to occur of (A) the tenth (10th) anniversary of the Date of Grant, and (B) the ninetieth (90th) day following the date of termination.

(b) Method of Exercise.

- (i) Subject to Section 4(a), the Vested Portion of the Option may be exercised by delivering to the Company at its principal office a properly completed exercise notice in the form attached hereto as Exhibit A, which shall specify the number of Class A Units for which the Option is being exercised (the "Purchased Class A Units"). The exercise notice shall be accompanied by payment in full of the Option Price made by cash or check, at the election of the Participant, or by such other means as are permitted by the Administrator in its sole discretion. The Participant shall not have any rights to distributions or other rights of a unitholder with respect to Class A Units subject to the Option until the Participant has submitted to the Company a properly completed exercise notice and paid in full for such Class A Units, satisfied any applicable withholding requirements and, if applicable, satisfied any other conditions imposed by the Administrator or pursuant to the Plan or this Agreement.
- (ii) Upon the Administrator's determination that the Option has been validly exercised as to any of the Purchased Class A Units, that the Participant has paid in full for such Purchased Class A Units as provided for in Section 4(b)(i) hereof, and that the Participant has satisfied any applicable withholding requirements with respect to such Purchased Class A Units, the Company shall issue certificates in the Participant's name for such Purchased Class A Units.
- (iii) As a condition to the exercise of the Option, the Participant shall execute a joinder Agreement pursuant to which the Participant shall become fully bound by the terms set forth in the LLC Agreement, unless the Administrator determines otherwise or unless the Participant is already a party to the LLC Agreement.

- (iv) Each married Participant shall obtain the consent of such Participant's spouse to evidence such spouse's consent to be bound by the terms and conditions of this Agreement and the LLC Agreement as to their interest, whether as community property or otherwise, if any, in the Class A Units owned by such Participant.
- (c) Section 83(b) Election Required. As a condition subsequent to the issuance of Class A Units upon exercise of the Option, within thirty (30) days following such exercise, the Participant shall make an election pursuant to Section 83(b) of the Code, substantially in the form attached hereto as Exhibit B, concerning such issued Class A Units and shall be required to file promptly a copy of such election with the Company.
5. Restrictive Covenants.
- (a) Confidentiality. The Participant recognizes that the services to be performed by the Participant are special, unique and extraordinary in that, by reason of the Participant's Employment, the Participant will acquire, certain Confidential Information of the Company or its Affiliates, the use or disclosure of which could cause the Company or its Affiliates substantial losses and damages which could not be readily calculated and for which no remedy at law would be adequate. In consideration of the Option granted to the Participant hereunder, from the Date of Grant and at all times thereafter, the Participant shall maintain in strict confidence and not disclose to third parties or use in any task, work or business (except on behalf of the Company) any proprietary or Confidential Information regarding the Company and/or the Participant's work with the Company, including without limitation, methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary information ("Confidential Information"). The Participant and the Company acknowledge that the Company would not grant the Option hereunder or provide the Participant with access to its Confidential Information without the covenants and promises contained in this paragraph. Notwithstanding the foregoing restrictions, the Participant may disclose any Confidential Information to the extent required by an order of any court or other governmental authority, but in each case only after the Company has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- (b) Survival. It is the desire and intent of the parties to this option Agreement that the provisions of this Section 5 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provisions or portion of this Section 5 shall be adjudicated to be invalid or unenforceable, this Section 5 shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such amendment to apply only with respect to the operation of such Section in the particular jurisdiction in which such adjudication is made.
- (c) Participant acknowledges and agrees that the restrictive covenants contained in this Section 5 are in consideration of the promises and covenants contained in this Agreement, including but not limited to the grant of the Option pursuant to the terms of this Agreement and the Plan, the provision to Participant of access to the Company's goodwill and Confidential Information, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Participant.

- (d) The parties recognize that the performance of the obligations under this Section 5 by the Participant is special, unique and extraordinary in character, and that in the event of the breach by the Participant of the terms and conditions of this Section 5 to be performed by Participant, the Company shall be entitled, if it so elects, to obtain damages for any breach of this Section 5 or to enforce the specific performance thereof by the Participant.
6. Withholding. Whenever Purchased Class A Units are to be issued, the Administrator shall have the right to require the Participant to remit to the Company cash sufficient to satisfy all federal, state and local withholding tax requirements prior to issuance of the Purchased Class A Units and the delivery of any certificate or certificates for such Purchased Class A Units. The Administrator shall also have the right to withhold from any issuance of Purchased Class A Units or other amounts payable to a Participant hereunder such amount as is necessary to satisfy any withholding obligations.
7. Non-transferability of Option. The Option and the Participant's other rights and obligations under the Plan and this Agreement may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its Affiliates; provided, that, the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. No such permitted transfer of the Option to heirs or legatees of the Participant shall be effective to bind the Company or any of its Affiliates unless the Administrator shall have been furnished with written notice thereof and a copy of such evidence as the Administrator may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions hereof. During the Participant's lifetime, the Option is exercisable only by the Participant.
8. Effect on Employment. Neither the granting of the Option evidenced hereby, nor the issuance of Class A Units upon exercise of this Option, nor this Agreement shall impose any obligation on the Company or its Affiliates to continue the Employment of the Participant, nor shall it lessen or affect the Company's or its Affiliates' rights to terminate the Employment of such Participant at any time or discipline such Participant at any time.
9. Legend on Certificates. If the Purchased Class A Units are certificated, such certifications shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan or the rules, regulations, and other requirements of the Securities and Exchange Commission or other securities regulatory authority, or any stock exchange upon which such Purchased Class A Units are listed, and any applicable federal or state laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.
10. Securities Laws. Upon the acquisition of any Purchased Class A Units, the Participant will make or enter into such written representations, warranties and agreements as the Administrator may reasonably request in order to comply with applicable securities laws or with this Agreement.
11. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered in the manner specified herein or, in the absence of such specification, shall be deemed to have been duly given when delivered by hand, upon electronic confirmation of receipt by email, or one (1) business day after sending by nationally reputable overnight delivery service, to the respective addresses of the parties set forth below:

For notices and communications to the Company to:

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

Berkshire Partners LLC

Attention:

Email:

and a further copy (which alone shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attention: Michael Nissan

Email: michael.nissan@weil.com

Weil, Gotshal & Manges LLP

100 Federal Street

Boston, MA 02110

Attention: Shayla Harlev

Email: Shayla.Harlev@weil.com

and to the Participant at the address appearing in the most recent personnel records of the Company or an Affiliate, as applicable, for the Participant or to either party hereto at such other address as either party may hereafter designate in writing to the other.

13. **Choice of Law.** This Agreement (including, without limitation, the validity, construction, effect or performance hereof or thereof and any remedies hereunder or thereunder or related hereto or thereto) and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution, performance or breach of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provisions (whether Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
14. **Option Subject to Plan.** By entering into this Agreement, the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan. The Option is subject to the Plan. The terms and provisions of the Plan, as it may be amended from time to time, are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.

15. Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
16. Headings. All headings and captions in this Agreement are for purposes of reference only and shall not be construed to limit or affect the substance of this Agreement.
17. Entire Agreement. This Agreement, together with the Exhibits hereto, the 2014 PHD Group Holdings LLC Equity Incentive Plan and the LLC Agreement, set forth the entire understanding of the parties, and as of the Date of Grant supersede all prior agreements and all other arrangements and communications, whether oral or written, with respect to the subject matter hereof and thereof; provided, however, that this Section 17 is not intended to and shall not supersede any Restrictive Covenants, and such Restrictive Covenants shall also remain in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Date of Grant.

PHD GROUP HOLDINGS LLC

Per: _____

Name:

Title:

Agreed and acknowledged
as of the Date of Grant:

(name)

EXHIBIT A

Class A Unit Option Plan Exercise Notice Form

I, _____ hereby exercise the Option to purchase _____ class A units (“**Class A Units**”) of PHD Group Holdings LLC, a Delaware Limited Liability Company (the “**Company**”) at a purchase price of \$_____ per Class A Unit. This Exercise Notice is delivered in respect of the Option to purchase _____ Class A Units of the Company that was granted to me on _____ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a check, or evidence of a wire transfer payable to the Company in the amount of \$_____ as full payment for the Class A Unit to be received upon exercise of the Option.

Date

Participant’s Signature

EXHIBIT B

FORM OF 83(b) ELECTION

Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: _____
TAXPAYER'S SOCIAL SECURITY NUMBER: _____
ADDRESS: _____
TAXABLE YEAR: Calendar Year 20__

2. The property which is the subject of this election is _____ units of Class A Common Units of PHD Group Holdings LLC.

3. The property was transferred to the undersigned on **[Insert date of exercise of Option]**.

4. The property is subject to the following restrictions: The Class A Units may be repurchased by PHD Group Holdings LLC in connection with the termination of employment in the amount equal to either (i) the lower of cost or fair market value in the case of a termination for Cause or a resignation without Good Reason prior to the fifth anniversary of the reference date set forth in the award agreement or (ii) the fair market value in the case of any other termination, including resignation without Good Reason on or after the fifth anniversary of the reference date set forth in the award agreement.

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$_____ per unit x _____ units = \$_____.

6. For the property transferred, the undersigned paid \$_____ per unit x _____ units = \$_____.

7. The amount to include in gross income is \$_____. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: _____

Taxpayer

FORM OF
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
of
PHD GROUP HOLDINGS LLC
Dated as of , 2021

Table of Contents
(Continued)

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND USAGE	1
Section 1.01. Definitions	1
Section 1.02. Other Definitional and Interpretative Provisions	10
ARTICLE 2 THE COMPANY	11
Section 2.01. Formation	11
Section 2.02. Name	11
Section 2.03. Term	12
Section 2.04. Registered Agent and Registered Office	12
Section 2.05. Purpose	12
Section 2.06. Powers of the Company	12
Section 2.07. Partnership Tax Status	12
Section 2.08. Regulation of Internal Affairs	12
Section 2.09. Ownership of Property	12
Section 2.10. Subsidiaries	12
Section 2.11. Qualification in Other Jurisdictions	12
ARTICLE 3 UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS	13
Section 3.01. Units; Admission of Members	13
Section 3.02. Substitute Members and Additional Members	14
Section 3.03. Tax and Accounting Information	15
ARTICLE 4 PUBCO OWNERSHIP; RESTRICTIONS ON PUBCO STOCK	17
Section 4.01. Pubco Ownership	17
Section 4.02. Restrictions on Pubco Common Stock	18
ARTICLE 5 CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS	20
Section 5.01. Capital Contributions	20
Section 5.02. Capital Accounts	20
Section 5.03. Amounts and Priority of Distributions	22
Section 5.04. Allocations	23
Section 5.05. Other Allocation Rules	26
Section 5.06. Tax Withholding	26
ARTICLE 6 CERTAIN TAX MATTERS	27
Section 6.01. Tax Matters Representative	27
Section 6.02. Section 754 Elections	28

Table of Contents
(Continued)

	<u>Page</u>
ARTICLE 7 MANAGEMENT OF THE COMPANY	28
Section 7.01. Management by the Managing Member	28
Section 7.02. Withdrawal of the Managing Member	28
Section 7.03. Decisions by the Members	29
Section 7.04. Duties	29
Section 7.05. Officers	30
ARTICLE 8 TRANSFERS OF INTERESTS	30
Section 8.01. Restrictions on Transfers	30
Section 8.02. Certain Permitted Transfers	31
Section 8.03. Distributions	32
Section 8.04. Registration of Transfers	32
ARTICLE 9 CERTAIN OTHER AGREEMENTS	32
Section 9.01. Company Call Right	32
Section 9.02. Preemptive Rights	33
ARTICLE 10 REDEMPTION AND EXCHANGE RIGHTS	33
Section 10.01. Redemption Right of a Member	33
Section 10.02. Election and Contribution of Pubco	35
Section 10.03. Exchange Right of Pubco	36
Section 10.04. Tender Offers and Other Events with Respect to Pubco	36
Section 10.05. Reservation of Shares of Class A Common Stock; Certificate of Pubco	37
Section 10.06. Effect of Exercise of Redemption or Exchange Right	37
Section 10.07. Tax Treatment	37
Section 10.08. Additional Exchange Restrictions	38
ARTICLE 11 LIMITATION ON LIABILITY, EXCULPATION AND INDEMNIFICATION	39
Section 11.01. Limitation on Liability	39
Section 11.02. Exculpation and Indemnification; Elimination of Fiduciary Duties	39
ARTICLE 12 DISSOLUTION AND TERMINATION	42
Section 12.01. Dissolution	42
Section 12.02. Winding Up of the Company	43
Section 12.03. Termination	44
Section 12.04. Survival	44

Table of Contents
(Continued)

	<u>Page</u>
ARTICLE 13 MISCELLANEOUS	44
Section 13.01. Expenses	44
Section 13.02. Further Assurances	45
Section 13.03. Notices	45
Section 13.04. Binding Effect; Benefit; Assignment	45
Section 13.05. Jurisdiction	46
Section 13.06. WAIVER OF JURY TRIAL	46
Section 13.07. Counterparts	46
Section 13.08. Entire Agreement	47
Section 13.09. Severability	47
Section 13.10. Amendment	47
Section 13.11. Confidentiality	48
Section 13.12. Governing Law	49
ARTICLE 14 REPRESENTATIONS OF MEMBERS	50
Section 14.01. Representations of Members	50
Schedule A Member Schedule	
Exhibit A Form of Redemption Notice	

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) OF PHD Group Holdings LLC, a Delaware limited liability company (the “**Company**”), dated as of _____, 2021, by and among the Company, Portillo’s Inc., a Delaware corporation (“**Pubco**”), and the other Persons listed on the signature pages hereto.

WITNESSETH:

WHEREAS, the Company has been heretofore formed as a limited liability company under the Delaware Act (as defined below) pursuant to a certificate of formation which was executed and filed with the Secretary of State of the State of Delaware on June 27, 2014;

WHEREAS, the Company, the Preferred Member, and the other members of the Company entered into the Amended and Restated Limited Liability Company Agreement of the Company, dated as of August 1, 2014, as amended by that certain First Amendment to the Amended and Restated Limited Liability Company Agreement of the Company, dated as of October 25, 2016 (collectively, the “**Prior LLC Agreement**”);

WHEREAS, pursuant to the terms of the Redemption Agreement, dated as of _____, 2021, by and among the Company and the Preferred Member (the “**Preferred Unit Redemption Agreement**”), the parties thereto have agreed to consummate the redemption of the preferred units of the Company and to take the other actions contemplated in such Preferred Unit Redemption Agreement;

WHEREAS, the Company, Pubco and the holders of limited liability company interests in the Company (the “**Members**”) have agreed to consummate the reorganization of the Company and to take the other actions contemplated in connection with the initial underwritten public offering of Pubco (the “**Reorganization**”); and

WHEREAS, the parties listed on the signature pages hereto and listed on Schedule A (as defined below) represent all of the holders of limited liability company interests in the Company (the “**Members**”).

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

ARTICLE 1

DEFINITIONS AND USAGE

Section 1.01. *Definitions.*

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

“**Additional Member**” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the new issuance of Units to such Person.

“**Adjusted Capital Account Deficit**” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

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

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

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

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person; provided that no Member nor any Affiliate of any Member shall be deemed to be an Affiliate of any other Member or any of its Affiliates solely by virtue of such Members’ Units.

“**Affiliated Fund**” shall mean, with respect to any Person, an investment fund or investment partnership that is an Affiliate of such Person or an entity that is directly or indirectly wholly-owned by such Person or one or more of such funds or partnerships (other than a portfolio company of any such fund or partnership).

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

“**Assumed Income Tax Rate**” means the highest effective combined marginal U.S. federal, state and local income tax rate applicable to an individual or corporation that is resident in New York, New York (whichever is higher) for such taxable year (taking into account the net investment income tax under Section 1411 of the Code and the deductibility of state and local taxes, in each case to the extent applicable), taking into account the character (long-term capital gain, qualified dividend income, tax exempt income, etc.) of the taxable income in question.

“**Available Cash**” means, with respect to any fiscal period, the amount of cash on hand which the Managing Member, in its sole discretion, deems available for distribution to the Members, taking into account all debts, liabilities and obligations of the Company then due and any Reserves.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in Boston, Massachusetts or Chicago, Illinois are authorized or required by Applicable Law to close.

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

“**Capital Contribution**” means, with respect to any Member, the amount of money and the initial Carrying Value of any Property (other than money) contributed to the Company.

“**Carrying Value**” means with respect to any Property (other than money), such Property’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Carrying Value of any such Property contributed by a Member to the Company shall be the gross fair market value of such Property, as reasonably determined by the Managing Member;

(ii) The Carrying Values of all such Properties shall be adjusted to equal their respective gross fair market values (taking Section 7701(g) of the Code into account), as reasonably determined by the Managing Member, at the time of any Revaluation pursuant to Section 5.02(c);

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

(iv) The Carrying Values of such Properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Properties pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (vi) of the definition of “**Net Income**” and “**Net Loss**” or Section 5.04(b)(vi); provided, however, that Carrying Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv). If the Carrying Value of such Property has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv), such Carrying Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

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

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

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

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

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

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

“**Delaware Act**” means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 *et seq.*

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

“**Effective Time**” means the date hereof.

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

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

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

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

“Involuntary Transfer” means any Transfer of Units by a Member resulting from (i) any seizure under levy of attachment or execution, (ii) any bankruptcy (whether voluntary or involuntary) or (iii) any Transfer to a state or to a public officer or agency pursuant to any statute pertaining to escheat or abandoned property.

“IPO” means the initial underwritten public offering of Pubco.

“IRS” means the Internal Revenue Service of the United States.

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

“LLC Unit” means a common limited liability interest in the Company.

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

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

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

“Member Nonrecourse Debt Minimum Gain” means an amount with respect to each “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) equal to the Company Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Treasury Regulation Section 1.752-1(a)(2)) determined in accordance with Treasury Regulation Section 1.704-2(i)(3).

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

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

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

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

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

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

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

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

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

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

“**Non-Pubco Member**” means any Member that is not the Pubco Member.

“**Nonrecourse Deductions**” has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

“**Original Units**” means the Class A Units of the Company outstanding immediately prior to the effectiveness of this Agreement.

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

“Permitted Transferee” means

(i) with respect to a Member who is a natural person (or a trust for the benefit of a natural person), (a) such Member’s spouse, children (including legally adopted children and stepchildren), spouses of children, grandchildren (including legally adopted children or stepchildren of such Member’s children), spouses of grandchildren, parents or siblings, (b) a trust for the benefit of the Member and/or any of the Persons described in clause (a) or (c) a corporation, limited partnership or limited liability company whose sole shareholders, partners or members, as the case may be, are the Member and/or any of the Persons described in clauses (a) or (b); provided, that in any of clauses (a) or (c), the Member transferring such Units retains exclusive power to exercise all rights under this Agreement and retains a proxy to vote the Units such Member has transferred;

(ii) upon death or incapacity of a Member, such Member’s estate, executors, administrators and personal representatives, legal representatives, heirs or legatees (whether or not such recipients are a spouse, children, spouses of children, grandchildren, spouses of grandchildren, parents or siblings of such Member);

(iii) with respect to any Member that is an investment fund, investment account or investment entity, such Member’s (a) investment manager, investment advisor or general partner of such Member or any investment manager, investment advisor or general partner that is an Affiliate of such Member, (b) any investment fund, investment account or investment entity whose investment manager, investment adviser or general partner is such Member or an Affiliate of such Member or (c) any investment fund, investment account or investment entity whose investment manager, investment advisor or general partner is the same entity as or an Affiliate of such Member’s investment manager, investment advisor or general partner; and

(iv) with respect to a Member that is not a natural person, a trust for the benefit of a natural person or an investment fund, investment account or investment entity, such Member’s Affiliates.

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

“Preferred Member” means Broad Street Principal Investments, L.L.C.

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

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

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

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

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

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated as of the date hereof, by and among Pubco and the Pre-IPO Holders.

“**Relative Percentage Interest**” means, with respect to any Member relative to another Member or Members, a fractional amount, expressed as a percentage, the numerator of which is the Percentage Interest of such Member; and the denominator of which is (x) the Percentage Interest of such Member plus (y) the aggregate Percentage Interest of such other Member or Members.

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

“**Reorganization Documents**” means this Agreement; the Tax Receivable Agreement; the Subscription Agreement; the Registration Rights Agreement and any other document entered into in connection with the Reorganization.

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

“**SEC**” means the United States Securities and Exchange Commission.

“**Subscription Agreement**” means the Subscription Agreement, to be dated the date of the closing of the IPO, by and among the Company and Pubco.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of Equity Securities or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or Controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

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

“**Substitute Member**” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the Transfer of then existing Units to such Person.

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

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

“**Transfer**” means any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, direct or indirect, in whole or in part, by operation of law or otherwise, and shall include all matters deemed to constitute a Transfer under Article 8. The terms “**Transferred**”, “**Transferring**”, “**Transferor**”, “**Transferee**” and “**Transferable**” have meanings correlative to the foregoing. Notwithstanding the foregoing, in no event shall any direct or indirect sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, whether by operation of law or otherwise, of a limited partnership interest in an investment fund or investment partnership that is a direct or indirect equityholder of a Member be considered, in and of itself, a “**Transfer**” for purposes of this Agreement.

“**Treasury Regulations**” mean the regulations promulgated under the Code, as amended from time to time.

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

“**Unit Redemption Price**” means the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by The Wall Street Journal or its successor, for each of the three (3) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the date of Redemption (or the date of the Call Notice, as applicable), subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then the Unit Redemption Price shall be determined in good faith by a committee of the board of directors of Pubco composed of a majority of the directors of Pubco that do not have an interest in the LLC Units being redeemed.

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

“Agreement”	Preamble
“Call Member”	9.01
“Call Notice”	9.01
“Call Units”	9.01
“Cash Settlement”	10.01(b)
“Company”	Preamble
“Confidential Information”	13.11(b)
“Contribution Notice”	10.01(b)
“Controlled Entities”	11.02(e)
“Direct Exchange”	10.04(a)
“Economic Pubco Security”	4.01(a)
“e-mail”	13.03
“Exchange Election Notice”	10.04(b)
“Expenses”	11.02(e)
“GAAP”	3.03(b)
“Indemnification Sources”	11.02(e)
“Indemnitee-Related Entities”	11.02(e)(i)
“Jointly Indemnifiable Claims”	11.02(e)(ii)
“Member Parties”	13.11(a)
“Member Schedule”	3.01(b)
“Officers”	7.05(a)
“Prior LLC Agreement”	Recitals
“Preferred Member”	Recitals
“Preferred Unit Redemption Agreement”	Recitals
“Pubco”	Preamble
“Pubco Offer”	10.04(a)
“Redeemed Units”	10.01(a)
“Redeeming Member”	10.01(a)
“Redemption”	10.01(a)
“Redemption Date”	10.01(a)
“Redemption Notice”	10.01(a)
“Redemption Right”	10.01(a)
“Regulatory Allocations”	5.04(c)
“Reorganization”	Recitals
“Retraction Notice”	10.01(b)
“Revaluation”	5.04(c)
“Share Settlement”	10.01(b)
“Tax Distribution”	5.03(e)
“Tax Matters Representative”	6.01(a)
“Transferor Member”	5.02(b)

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein, shall have the

meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law”, “laws” or to a particular statute or law shall be deemed also to include any Applicable Law. As used in this Agreement, all references to “majority in interest” and phrases of similar import shall be deemed to refer to such percentage or fraction of interest based on the Relative Percentage Interests of the Members subject to such determination. Unless otherwise expressly provided herein, when any approval, consent or other matter requires any action or approval of any group of Members, including any holders of any class of Units, such approval, consent or other matter shall require the approval of a majority in interest of such group of Members. Except to the extent otherwise expressly provided herein, all references to any Member shall be deemed to refer solely to such Person in its capacity as such Member and not in any other capacity.

ARTICLE 2

THE COMPANY

Section 2.01. *Formation.* The Company was formed upon the filing of the certificate of formation of the Company with the Secretary of State of the State of Delaware on June 27, 2014. The authorized officer or representative, as an “authorized person” within the meaning of the Delaware Act, shall file and record any amendments and/or restatements to the certificate of formation of the Company and such other certificates and documents (and any amendments or restatements thereof) as may be required under the laws of the State of Delaware and of any other jurisdiction in which the Company may conduct business. The authorized officer or representative shall, on request, provide any Member with copies of each such document as filed and recorded. The Members hereby agree that the Company and its Subsidiaries shall be governed by the terms and conditions of this Agreement and, except as provided herein, the Delaware Act.

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

Section 2.03. *Term.* The Company shall have perpetual existence unless sooner dissolved and its affairs wound up as provided in Article 12.

Section 2.04. *Registered Agent and Registered Office.* The registered office required to be maintained by the Company in the State of Delaware pursuant to the Delaware Act is c/o the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The name and address of the registered agent of the Company pursuant to the Delaware Act are the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The Company may, upon compliance with the applicable provisions of the Act, change its registered office or registered agent from time to time in the discretion of the Managing Member.

Section 2.05. *Purpose.* Subject to the limitations contained elsewhere in this Agreement, the Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Delaware Act and engaging in any and all activities necessary, advisable, convenient or incidental thereto.

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

Section 2.07. *Partnership Tax Status.* The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes to the extent such treatment is available, and agree to take such actions as may be necessary to receive and maintain such treatment and refrain from taking any positions or making any elections inconsistent therewith.

Section 2.08. *Regulation of Internal Affairs.* The internal affairs of the Company and the conduct of its business shall be regulated by this Agreement, and to the extent not provided for herein, shall be determined by the Managing Member.

Section 2.09. *Ownership of Property.* Legal title to all Property, conveyed to, or held by the Company or its Subsidiaries shall reside in the Company or its Subsidiaries and shall be conveyed only in the name of the Company or its Subsidiaries and no Member or any other Person, individually, shall have any ownership of such Property.

Section 2.10. *Subsidiaries.* The Company shall cause the business and affairs of each of the Subsidiaries to be managed by the Managing Member in accordance with and in a manner consistent with this Agreement.

Section 2.11. *Qualification in Other Jurisdictions.* The Managing Member shall execute, deliver and file certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the jurisdictions in which the Company may wish to conduct business. In those jurisdictions in which the Company may wish to conduct business in which qualification or registration under assumed or fictitious names is required or desirable, the Managing Member shall cause the Company to be so qualified or registered in compliance with Applicable Law.

ARTICLE 3

UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS

Section 3.01. *Units; Admission of Members.*

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

(b) Effective as of the execution of this Agreement, each Member hereby exchanges the Original Units held by such Member immediately prior to the execution of this Agreement for the number of LLC Units set forth opposite the name of such Member on Schedule A (the "**Member Schedule**") in the column titled "LLC Units". As a result of such exchange, the Original Units held by each Member immediately prior to the execution of this Agreement are hereby cancelled and extinguished without any further action by any Person.

(c) The Member Schedule shall be maintained by the Managing Member on behalf of the Company in accordance with this Agreement. Notwithstanding anything to the contrary contained herein or in the Delaware Act, neither the Managing Member nor the Company shall be required to disclose an unredacted Member Schedule to any Non-Pubco Member, or any other information showing the identity of the other Non-Pubco Members or the number of LLC Units or shares of Class B Common Stock owned by another Non-Pubco Member. For each Non-Pubco Member, the Company shall provide such Member, upon request, a redacted copy of the Member Schedule revealing only such Member's LLC Units, the total issued and outstanding LLC Units, and such Member's Percentage Interest. When any Units or other Equity Securities of the Company are issued, repurchased, redeemed, converted or Transferred in accordance with this Agreement, the Member Schedule shall be amended by the Managing Member to reflect such issuance, repurchase, redemption or Transfer, the admission of additional or substitute Members and the resulting Percentage Interest of each Member. Following the date hereof, no Person shall be admitted as a Member and no additional Units shall be issued except as expressly provided herein.

(d) The Managing Member may cause the Company to authorize and issue pursuant to Section 4.01, from time to time, such other Units or other Equity Securities of any type, class or series and having the designations, preferences and/or special rights as may be determined by the Managing Member. Such Units or other Equity Securities may be issued pursuant to such agreements as the Managing Member shall approve, including with respect to Persons employed by or otherwise performing services for the Company or any of its Subsidiaries, other equity compensation agreements, options or warrants. When any such other Units or other Equity Securities are authorized and issued, the Member Schedule and this Agreement shall be amended by the Managing Member to reflect such additional issuances and resulting dilution, which shall be borne by all Members in proportion to their respective Percentage Interests.

(e) In addition to amendments permitted by Section 3.01(d), the Managing Member, in its sole discretion and without the approval at the time of any other Member or other Person bound by this Agreement and notwithstanding Section 13.10, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, as the Managing Member determines in its sole discretion to be necessary, desirable or advisable to effect the combination, subdivision and/or reclassification of outstanding Units as may be necessary or appropriate to give, economic effect to equity investments in the Company by the Managing Member that are not accompanied by the issuance by the Company to the Managing Member of additional Units and to update the books and records of the Company accordingly.

Section 3.02. Substitute Members and Additional Members.

(a) No Transferee of any Units or Person to whom any Units are issued pursuant to this Agreement shall be admitted as a Member hereunder or acquire any rights hereunder, including any voting rights or the right to receive distributions and allocations in respect of the Transferred or issued Units, as applicable, unless (i) such Units are Transferred or issued in compliance with the provisions of this Agreement (including Article 8), (ii) such Transferee or recipient shall have executed and delivered to the Company such instruments as the Managing Member deems necessary or desirable, in its reasonable discretion, to effectuate the admission of such Transferee or recipient as a Member and to confirm the agreement of such Transferee or recipient to be bound by all the terms and provisions of this Agreement, (iii) the Managing Member shall have received the opinion of counsel, if any, required by Section 3.02(b) in connection with such Transfer and (iv) all necessary instruments reflecting such Transfer and/or admission shall have been filed in each jurisdiction in which such filing is necessary in order to qualify the company to conduct business or to preserve the limited liability of the Members. Upon complying with the immediately preceding sentence, without the need for any further action of any Person, a Transferee or recipient shall be deemed admitted to the Company as a Member. A Substitute Member shall enjoy the same rights, and be subject to the same obligations, as the Transferor; provided that such Transferor shall not be relieved of any obligation or liability hereunder arising prior to the consummation of such Transfer but shall be relieved of all future obligations with respect to the Units so Transferred. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission of a Substitute Member or Additional Member. In the event of any admission of a Substitute Member or Additional Member pursuant to this Section 3.02(a), this Agreement shall be deemed amended to reflect such admission, and any formal amendment of this Agreement (including the Member Schedule) in connection therewith shall only require execution by the Company and such Substitute Member or Additional Member, as applicable, to be effective.

(b) As a further condition to any Transfer of all or any part of a Member's Units, the Managing Member may, in its discretion, require a written opinion of counsel to the transferring Member reasonably satisfactory to the Managing Member, obtained at the sole expense of the transferring Member, reasonably satisfactory in form and substance to the Managing Member, as to such matters as are customary and appropriate in transactions of this type, including, without limitation (or, in the case of any Transfer made to a Permitted Transferee, limited to an opinion) to the effect that such Transfer will not result in a violation of the registration or other requirements of the Securities Act or any other federal or state securities laws. No such opinion, however, shall be required in connection with a Transfer made pursuant to Article 10 of this Agreement or in connection with a Transfer by any Member that is an investment fund, investment account or investment entity or any of their or their Affiliates' respective Affiliated Funds.

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

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

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

Section 3.03. *Tax and Accounting Information.*

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

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

(c) *Financial Reports.*

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

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

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

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

(d) *Tax Returns.*

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

(ii) The Company shall furnish to each Member (a) as soon as reasonably practical after the end of each Fiscal Year and in any event by August 1, all information concerning the Company and its Subsidiaries required for the preparation of tax returns of such Members (or any beneficial owner(s) of such Member), including a report (including Schedule K-1), indicating each Member's share of the Company's taxable income, gain, credits, losses and deductions for such year, in sufficient detail to enable such Member to prepare its federal, state and other tax returns; provided that estimates of such information believed by the Managing Member in good faith to be reasonable shall be provided by March 15, and (b) from time to time as reasonably requested by such Member, such other information concerning the Company and its Subsidiaries that is reasonably requested by such Member for compliance with its tax obligations (or the tax obligations of any beneficial owner(s) of such Member) including for purposes of making quarterly estimated tax payments.

(e) *Inconsistent Positions.* Each Member agrees not to, except as otherwise required by applicable law or regulatory requirements, (i) treat, on such Member's individual income tax returns, any item of income, gain, loss, deduction or credit relating to such Member's interest in the Company in a manner inconsistent with the treatment of such item by the Company as reflected on the Form K-1 or other information statement furnished by the Company to such Member for use in preparing such Member's income tax returns or (ii) file any claim for refund relating to any such item based on, or which would result in, such inconsistent treatment.

ARTICLE 4

PUBCO OWNERSHIP; RESTRICTIONS ON PUBCO STOCK

Section 4.01. *Pubco Ownership.*

(a) Except as otherwise determined by Pubco, if at any time Pubco issues a share of Class A Common Stock or any other Equity Security of Pubco entitled to any economic rights (including in the IPO) (an “**Economic Pubco Security**”) with regard thereto (other than Class B Common Stock, or other Equity Security of Pubco not entitled to any economic rights with respect thereto), (i) the Company shall issue to Pubco one LLC Unit (if Pubco issues a share of Class A Common Stock) or such other Equity Security of the Company (if Pubco issues an Economic Pubco Security other than Class A Common Stock) corresponding to the Economic Pubco Security, and with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Economic Pubco Security and (ii) the net proceeds received by Pubco with respect to the corresponding Economic Pubco Security, if any, shall be concurrently contributed to the Company; provided, however, that if Pubco issues any Economic Pubco Securities, some or all of the net proceeds of which are to be used to fund expenses or other obligations of Pubco for which Pubco would be entitled to a distribution from the Company pursuant to Section 5.03(c) or reimbursement by the Company pursuant to Section 13.01, then Pubco shall not be required to transfer such net proceeds to the Company which are used or will be used to fund such expenses or obligations and provided, further, that if Pubco issues any shares of Class A Common Stock (including in the IPO) in order to purchase or fund the purchase from a Non-Pubco Member of a number of LLC Units (and shares of Class B Common Stock) or to purchase or fund the purchase of shares of Class A Common Stock, in each case equal to the number of shares of Class A Common Stock issued, then the Company shall not issue any new LLC Units in connection therewith and Pubco shall not be required to transfer such net proceeds to the Company (it being understood that such net proceeds shall instead be transferred to such Non-Pubco Member or transferor of Class A Common Stock, as applicable, as consideration for such purchase).

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

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

(b) Except as otherwise determined by the Managing Member in accordance with Section 4.02(d), (i) Pubco and its Subsidiaries may not redeem, repurchase or otherwise acquire any shares of Class A Common Stock unless substantially simultaneously therewith the Company redeems, repurchases or otherwise acquires from Pubco or any of its Subsidiaries an equal number of LLC Units for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of LLC Units for no consideration) and (ii) Pubco and its Subsidiaries may not redeem or repurchase any other Equity Securities of Pubco unless substantially simultaneously therewith the Company redeems or repurchases from Pubco or any of its Subsidiaries an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) or other economic rights as those of such Equity Securities of Pubco for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Equity Securities other than Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of its corresponding Equity Securities for no consideration). Except as otherwise determined by the Managing Member in accordance with Section 4.02(d), (x) the Company may not redeem, repurchase or otherwise acquire LLC Units from Pubco or any of its Subsidiaries unless substantially simultaneously Pubco or such Subsidiary redeems, repurchases or otherwise acquires an equal number of Class A Common Stock for the same price per security from holders thereof (except that if the Company cancels LLC Units for no consideration as described in Section 4.02(b)(i), then the price per security need not be the same) and (y) the Company may not redeem, repurchase or otherwise acquire any other Equity Securities of the Company from Pubco or any of its Subsidiaries unless substantially simultaneously Pubco or such Subsidiary redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of Pubco of a corresponding class or series with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) and other economic rights as those of such Equity Securities of Pubco (except that if the Company cancels Equity Securities for no consideration as described in

Section 4.02(b)(ii), then the price per security need not be the same). Notwithstanding the immediately preceding sentence, to the extent that any consideration payable to Pubco in connection with the redemption or repurchase of any shares or other Equity Securities of Pubco or any of its Subsidiaries consists (in whole or in part) of shares or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then redemption or repurchase of the corresponding LLC Units or other Equity Securities of the Company shall be effectuated in an equivalent manner (except if the Company cancels LLC Units or other Equity Securities for no consideration as described in this Section 4.02(b)).

(c) Except as provided in Section 3.01(e), the Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding LLC Units unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Pubco Common Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Pubco Common Stock unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding LLC Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

(d) Notwithstanding anything to the contrary in this Article 4:

(i) if at any time the Managing Member shall determine that any debt instrument of Pubco, the Company or its Subsidiaries shall not permit Pubco or the Company to comply with the provisions of Section 4.02(a) or Section 4.02(b) in connection with the issuance, redemption or repurchase of any shares of Class A Common Stock or other Equity Securities of Pubco or any of its Subsidiaries or any Units or other Equity Securities of the Company, then the Managing Member may in good faith implement an economically equivalent alternative arrangement without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of a majority in interest of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met; and

(ii) if (x) Pubco incurs any indebtedness and desires to transfer the proceeds of such indebtedness to the Company and (y) Pubco is unable to lend the proceeds of such indebtedness to the Company on an equivalent basis because of restrictions in any debt instrument of Pubco, the Company or its Subsidiaries, then notwithstanding Section 4.02(a) or Section 4.02(b), the Managing Member may in good faith implement an economically equivalent alternative arrangement in connection with the transfer of proceeds to the Company using non-participating preferred Equity Securities of the Company without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of a majority in interest of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met.

ARTICLE 5

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS

Section 5.01. *Capital Contributions.*

(a) From and after the date hereof, no Member shall have any obligation to the Company, to any other Member or to any creditor of the Company to make any further Capital Contribution, except, with respect to Pubco, as expressly provided in Section 4.01(a), Section 4.01(c) or Section 10.02.

(b) Except as expressly provided herein, no Member, in its capacity as a Member, shall have the right to receive any cash or any other property of the Company.

Section 5.02. *Capital Accounts.*

(a) Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Member on the books of the Company in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such provisions, the following provisions:

(i) Each Member listed on the Member Schedule shall be credited with the Reorganization Date Capital Account Balance set forth on the Member Schedule. The Member Schedule shall be amended by the Managing Member from time to time to reflect adjustments to the Members' Capital Accounts made in accordance with Sections 5.02(a)(ii), 5.02(a)(iii), 5.02(a)(iv), 5.02(c) or otherwise.

(ii) To each Member's Capital Account there shall be credited: (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Income and any item in the nature of income or gain that is allocated pursuant to Section 5.04 and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member.

(iii) To each Member's Capital Account there shall be debited: (A) the amount of money and the Carrying Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Net Loss and any items in the nature of expenses or losses that are allocated to such Member pursuant to Section 5.04 and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company.

(iv) In determining the amount of any liability for purposes of subparagraphs (ii) and (iii) above there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Managing Member shall reasonably determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are maintained (including debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), the Managing Member may make such modification so long as such modification will not have any effect on the amounts distributed to any Person pursuant to Article 12 upon the dissolution of the Company. The Managing Member also shall (i) make any adjustments that are necessary or appropriate to maintain equality between Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(b) *Succession to Capital Accounts.* In the event any Person becomes a Substitute Member in accordance with the provisions of this Agreement, such Substitute Member shall succeed to the Capital Account of the former Member (the "**Transferor Member**") to the extent such Capital Account relates to the Transferred Units.

(c) *Adjustments of Capital Accounts.* The Company shall revalue the Capital Accounts of the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (a "**Revaluation**") at the following times: (i) immediately prior to the contribution of more than a de minimis amount of money or other property to the Company by a new or existing Member as consideration for one or more Units; (ii) the distribution by the Company to a Member of more than a de minimis amount of property in respect of one or more Units; (iii) the issuance by the Company of more than a de minimis amount of Units as consideration for the provision of services to or for the benefit of the Company (as described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii)); and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interest of the Members.

(d) No Member shall be entitled to withdraw capital or receive distributions except as specifically provided herein. A Member shall have no obligation to the Company, to any other Member or to any creditor of the Company to restore any negative balance in the Capital Account of such Member. Except as expressly provided elsewhere herein, no interest shall be paid on the balance in any Member's Capital Account.

(e) Whenever it is necessary for purposes of this Agreement to determine a Member's Capital Account on a per Unit basis, such amount shall be determined by dividing the Capital Account of such Member attributable to the applicable class of Units held of record by such Member by the number of Units of such class held of record by such Member.

Section 5.03. *Amounts and Priority of Distributions.*

(a) *Distributions Generally.* Except as otherwise provided in Section 5.03(e) or Section 12.02, distributions shall be made to the Members as set forth in this Section 5.03, at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(b) *Distributions to the Members.* Subject to Sections 5.03(e), 5.03(f), and 5.03(g), distributions shall be made to the Members in proportion to their respective Percentage Interests at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(c) *Pubco Distributions.* Notwithstanding the provisions of Section 5.03(b), the Managing Member, in its sole discretion, may authorize that cash be paid to Pubco or any of its Subsidiaries (which payment shall be made without pro rata distributions to the other Members) in exchange for the redemption, repurchase or other acquisition of Units held by Pubco or any of its Subsidiaries to the extent that such cash payment is used to redeem, repurchase or otherwise acquire an equal number of shares of Class A Common Stock in accordance with Section 4.02(b); provided, that no distribution (except a distribution relating to redemptions in respect of compensatory equity) shall be made pursuant to this Section 5.03(c) to the extent that, in the Managing Member's reasonable determination, such distribution would reduce distributions under Section 5.03(e).

(d) *Distributions in Kind.* Any distributions in kind shall be made at such times and in such amounts as the Managing Member, in its sole discretion, shall determine based on the fair market value of such in kind distributions as determined by the Managing Member in the same proportions as if distributed in accordance with Section 5.03(b), with all Members participating in proportion to their respective Percentage Interests. If cash and property are to be distributed in kind simultaneously, the Company shall distribute such cash and property in kind in the same proportion to each Member.

(e) *Tax Distributions.* The Managing Member shall (solely to the extent of any Available Cash) cause the Company, no later than five days prior to the date on which U.S. federal corporate quarterly estimated tax payments are due for a taxpayer with a taxable year ending on December 31, to make a distribution (a "**Tax Distribution**") to each Member in an amount equal to the excess of (A) the product of (i) the estimated net taxable income allocable to such Member, for such taxable year through the end of such period, and (ii) the Assumed Income Tax Rate, over (B) distributions previously made to such Member pursuant to this Section 5.03 or Section 12.02 with respect to the taxable year. A final accounting for Tax Distributions shall be made after the allocation of the Company's actual net taxable income or loss has been determined for a taxable year (or applicable portion thereof) and any shortfall in the amount of Tax Distributions a Member received for such taxable year based on such final accounting shall, to the extent of Available Cash, be promptly distributed to such Member. In computing taxable income or loss for purposes of this Section 5.03(e), items of income, gain, loss and deduction shall be determined (i) with or without regard to any adjustments pursuant to Section 743 of the Code (in whole or in part), in the

sole discretion of the Managing Member, and (ii) taking into account any allocations under Section 704(c) of the Code and the Treasury Regulations thereunder. A Tax Distribution to a Member in respect of any LLC Unit shall be charged against current or future distributions to which such Member would otherwise have been entitled under this Section 5.03 or Section 12.02 in respect of such Unit; provided, however, all LLC Units shall participate in distributions made pursuant to Section 5.03 on a pro rata basis. Notwithstanding the foregoing, (A) any distributions made pursuant to this Section 5.03(e) shall be made to the Members on a pro rata basis in accordance with the number of each Member's LLC Units over the total number of outstanding LLC Units, (B) to the extent of Available Cash, the pro rata amount to be distributed to each Member shall be calculated based on the distribution to the Member that would have the highest Tax Distribution under this Section 5.03(e) on a per-unit basis, calculated without regard to this sentence and (C) if there is insufficient Available Cash to make all of the distributions described in clause (B), the amount that would have been distributed to each Member pursuant to clause (B) shall be reduced on a pro rata basis. For the avoidance of doubt, whether a distribution is treated as a Tax Distribution or a distribution pursuant to Section 5.03(b) is not intended to impact allocations or ultimate economic entitlement under this Agreement, and this Agreement shall be interpreted consistent with such intent.

(f) *Distributions Resulting in Violation of Law or Default.* Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make, or cause to be made, any distribution to any Member (and the Company shall not make any distribution to Pubco) on account of any Unit if such distribution would violate any applicable Law or the terms of any financing agreement of the Pubco, the Company or any of its Subsidiaries or result in a default (or an event that, with notice or the lapse of time or both, would constitute a default) thereunder.

(g) *Assignment.* Each Member and its Permitted Transferees shall have the right to assign to any Transferee of LLC Units, pursuant to a Transfer made in compliance with this Agreement, the right to receive any portion of the amounts distributable or otherwise payable to such Member pursuant to Section 5.03(b).

Section 5.04. *Allocations.*

(a) Net Income and Net Loss. Except as otherwise provided in this Agreement, and after giving effect to the special allocations set forth in Section 5.04(b), Section 5.04(c) and Section 5.04(d), Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 5.03(b) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 5.03(b), to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

(b) *Special Allocations.* The following special allocations shall be made in the following order:

(i) *Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 5, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.04(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Member Nonrecourse Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article 5, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.04(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset.* In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as promptly as possible; provided that an allocation pursuant to this Section 5.04(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 5 have been tentatively made as if this Section 5.04(b)(iii) were not in this Agreement.

(iv) *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in a manner determined by the Managing Member consistent with Treasury Regulations Sections 1.704-2(b) and 1.704-2(c).

(v) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(j)(1).

(vi) *Section 754 Adjustments.* (A) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company or as a result of a Transfer of a Member's interest in the Company, as the case may be, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of such asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income and Net Loss. (B) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to such Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) *Curative Allocations.* The allocations set forth in Section 5.04(b)(i) through Section 5.04(b)(vi) and Section 5.04(d) (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 5.04(c). Therefore, notwithstanding any other provision of this Article 5 (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 5.04.

(d) *Loss Limitation.* Net Loss (or individual items of loss or deduction) allocated pursuant to Section 5.04 hereof shall not exceed the maximum amount of Net Loss (or individual items of loss or deduction) that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Loss (or individual items of loss or deduction) pursuant to Section 5.04 hereof, the limitation set forth in this Section 5.04(d) shall be applied on a Member by Member basis and Net Loss (or individual items of loss or deduction) not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). Any reallocation of Net Loss pursuant to this (d) shall be subject to chargeback pursuant to the curative allocation provision of Section 5.04(c).

Section 5.05. *Other Allocation Rules.*

(a) *Interim Allocations Due to Changes in Interests.* For any fiscal year during which a Member's interest in the Company is assigned by such Member (or by an assignee or successor in interest to a Member), the portion of the Net Income and Net Loss of the Company that is allocable in respect of such Member's interest shall be apportioned between the assignor and the assignee of such Member's interest using, to the extent practicable, the closing of the books method under Section 706 of the Code and the Treasury Regulations thereunder.

(b) *Tax Allocations:* Code Section 704(c). In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company and with respect to reverse Code Section 704(c) allocations described in Treasury Regulations 1.704-3(a)(6) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Carrying Value or its Carrying Value determined pursuant to Treasury Regulation 1.704-1(b)(2)(iv)(f) (computed in accordance with the definition of Carrying Value) using the traditional allocation method under Treasury Regulation 1.704-3(b) or such other allocation method with respect to existing allocation methods or reverse allocation methods under Section 704(c) of the Code that are already applicable with respect to the Company. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.05(b), Section 704(c) of the Code (and the principles thereof), and Treasury Regulation 1.704-1(b)(4)(i) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Loss, other items, or distributions pursuant to any provision of this Agreement (other than with respect to Tax Distributions).

Section 5.06. *Tax Withholding.* Each Member hereby authorizes the Company to withhold and to pay over any taxes required under applicable law to be withheld by the Company with respect to any amount payable, distributable or allocable by the Company to such Member; if and to the extent that the Company shall be required to withhold any such taxes, such Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding is required to be paid, which payment shall be deemed to be a distribution to such Member, provided that if the Managing Member reasonably determines that such Member would not be expected to receive any future distributions in the amount of such payment, the Member shall pay to the Company the amount by which such payment exceeds such

expected future distributions. The withholdings referred to in this Section 5.06 shall be made at the maximum applicable statutory rate under applicable tax law unless the Company receives documentation, reasonably satisfactory to the Managing Member, to the effect that a lower rate is applicable, or that no withholding is applicable. To the fullest extent permitted by law, each Member hereby agrees to indemnify and hold harmless the Company and the other Members from and against any liability for taxes, penalties, additions to tax or interest with respect to income attributable to or distributions or other payments to such Member. The obligations of a Member set forth in this Section 5.06 shall survive the withdrawal of a Member from the Company or any Transfer of a Member's Units.

ARTICLE 6 CERTAIN TAX MATTERS

Section 6.01. *Tax Matters Representative.*

(a) The Managing Member shall cause the Company to take all necessary actions required by Law to designate Pubco as the "tax matters partner" within the meaning given to such term in Section 6231 of the Code (as in effect prior to the repeal of such section pursuant to the Bipartisan Budget Act of 2015) with respect to any taxable year of the Company beginning on or before December 31, 2017. The Managing Member shall further cause the Company to take all necessary actions required by Law to designate Pubco as the "partnership representative" within the meaning of Section 6223(a) of the Code with respect to any taxable year of the Company beginning after December 31, 2017, and if the "partnership representative" is an entity, the "partnership representative" is hereby authorized to appoint a "designated individual" within the meaning of Treasury Regulation Section 301.6223-1(b) (in such capacities, collectively, the "**Tax Matters Representative**"). The Tax Matters Representative shall have all of the rights, duties, powers and obligations provided for in the Code with respect to the Company. The Company shall not be obligated to pay any fees or other compensation to the Tax Matters Representative in its capacity as such, but the Company shall reimburse the Tax Matters Representative for all reasonable out-of-pocket costs and expenses (including attorneys' and other professional fees) incurred by it in its capacity as Tax Matters Representative. Each Member agrees to cooperate with the Company and the Tax Matters Representative and to do or refrain from doing any or all things reasonably requested by the Company or the Tax Matters Representative in connection with any examination of the Company's affairs by any federal, state, or local tax authorities, including resulting administrative and judicial proceedings. The Company shall defend, indemnify, and hold harmless the Tax Matters Representative against any and all liabilities sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Tax Matters Representative, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

(b) If the Company pays an imputed underpayment pursuant to Section 6225 of the Code or any similar provision of state, local or non-U.S. law, to the extent possible, the portion thereof attributable to a Member shall be treated as a withholding tax with respect to such Partner under Section 5.06. To the extent that such portion of an imputed underpayment cannot be withheld from a current distribution, the applicable Member (or former Member) shall be liable to the Company for the amount that cannot be so offset. The Members acknowledge that the Company may make the election described in Section 6226 of the Code and any analogous election under state, local or non-U.S. law to the extent such election is available under applicable law, instead of paying an imputed underpayment.

Section 6.02. *Section 754 Elections.* The Company shall make, and shall cause any Subsidiary of the Company that is treated as a partnership for U.S. federal income tax purposes to make, a timely election under Section 754 of the Code (and a corresponding election under state and local law) effective starting with the taxable year including the IPO, and the Managing Member shall not take any action to revoke such elections.

ARTICLE 7

MANAGEMENT OF THE COMPANY

Section 7.01. *Management by the Managing Member.* Except as otherwise specifically set forth in this Agreement, the Managing Member shall be deemed to be a “manager” for purposes of applying the Delaware Act. Except as expressly provided in this Agreement or the Delaware Act, the day-to-day business and affairs of the Company and its Subsidiaries shall be managed, operated and Controlled by the Managing Member in accordance with the terms of this Agreement and no other Members shall have management authority or rights over the Company or its Subsidiaries. The Managing Member is, to the extent of its rights and powers set forth in this Agreement, an agent of the Company for the purpose of the Company’s and its Subsidiaries’ business, and the actions of the Managing Member taken in accordance with such rights and powers, shall bind the Company (and no other Members shall have such right). Except as expressly provided in this Agreement, the Managing Member shall have all necessary powers to carry out the purposes, business, and objectives of the Company and its Subsidiaries. The Managing Member shall have the power and authority to delegate to one or more other Persons the Managing Member’s rights and powers to manage and Control the business and affairs of the Company, including to delegate to agents and employees of a Member or the Company (including any officers or Subsidiary thereof), and to delegate by a management agreement or another agreement with, or otherwise to, other Persons. The Managing Member may authorize any Person (including any Member or officer of the Company) to enter into and perform any document on behalf of the Company or any Subsidiary.

Section 7.02. *Withdrawal of the Managing Member.* Pubco may withdraw as the Managing Member and appoint as its successor, at any time upon written notice to the Company, (i) any wholly-owned Subsidiary of Pubco, (ii) any Person of which Pubco is a wholly-owned Subsidiary, (iii) any Person into which Pubco is merged or consolidated or (iv) any transferee of all or substantially all of the assets of Pubco, which withdrawal and replacement shall be effective upon the delivery of such notice. No appointment of a Person other than Pubco (or its successor, as applicable) as Managing Member shall be effective unless Pubco (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against the new Managing Member, to cause the new Managing Member to comply with all the Managing Member’s obligations under this Agreement and the Reorganization Documents.

Section 7.03. *Decisions by the Members.*

(a) Other than the Managing Member, the Members shall take no part in the management of the Company's business and shall transact no business for the Company and shall have no power to act for or to bind the Company; provided, however, that the Company may engage any Member or principal, partner, member, shareholder or interest holder thereof as an employee, independent contractor or consultant to the Company, in which event the duties and liabilities of such individual or firm with respect to the Company as an employee, independent contractor or consultant shall be governed by the terms of such engagement with the Company. The Managing Member shall not (i) engage in any activity unrelated to the business or management of the Company and its Subsidiaries or (ii) own any material assets other than Units and/or any cash or other property or assets distributed by, or otherwise received from, the Company, without the prior written consent of the majority-in-interest of the Non-Pubco Members.

(b) Except as expressly provided herein, the Members shall not have the power or authority to vote, approve or consent to any matter or action taken by the Company. Except as otherwise provided herein, any proposed matter or action subject to the vote, approval or consent of the Members shall require the approval of a majority in interest of the Members or such class of Members, as the case may be, by (x) resolution at a duly convened meeting of the Members, or (y) written consent of the Members. Except as expressly provided herein, all Members shall vote together as a single class on any matter subject to the vote, approval or consent of the Members. In the case of any such approval, a majority in interest of the Members may call a meeting of the Members at such time and place or by means of telephone or other communications facility that permits all persons participating in such meeting to hear and speak to each other for the purpose of a vote thereon. Notice of any such meeting shall be required, which notice shall include a brief description of the action or actions to be considered by the Members. Unless waived by any such Member in writing, notice of any such meeting shall be given to each Member at least two (2) Business Days prior thereto. Attendance or participation of a Member at a meeting shall constitute a waiver of notice of such meeting, except when such Member attends or participates in the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not properly called or convened. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the actions so taken, shall be signed by Members sufficient to approve such action pursuant to this Section 7.03(b). A copy of any such consent in writing will be provided to the Members promptly thereafter.

Section 7.04. *Duties.*

(a) The parties acknowledge that the Managing Member will take action through its board of directors and officers, and that the members of the Managing Member's board of directors and its officers will owe fiduciary duties to the stockholders of the Managing Member. The Managing Member will use all commercially reasonable and appropriate efforts and means, as determined in good faith by the Managing Member, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of the Managing Member, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Managing Member, the Members and/or the stockholders of the Managing Member in a manner that does not (i) advantage or disadvantage the Members or their interests relative to the stockholders of the

Managing Member, (ii) advantage or disadvantage the stockholders of the Managing Member relative to the Members or (iii) treats the Members and the stockholders of the Managing Member differently; provided that in the event of a conflict between the interests of the stockholders of the Managing Member and the interests of the Members other than the Managing Member, such other Members agree that the Managing Member shall discharge its fiduciary duties to such other Members by acting in the best interests of the Managing Member's stockholders.

Section 7.05. *Officers.*

(a) *Appointment of Officers.* The Managing Member may appoint individuals as officers (“**Officers**”) of the Company, which may include such officers as the Managing Member determines are necessary and appropriate. No Officer need be a Member. An individual may be appointed to more than one office. If an Officer is also an officer of the Managing Member, then Section 7.04 shall apply to such Officer in the same manner as it applies to the Managing Member.

(b) *Authority of Officers.* The Officers shall have the duties, rights, powers and authority as may be prescribed by the Managing Member from time to time.

(c) *Removal, Resignation and Filling of Vacancy of Officers.* The Managing Member may remove any Officer, for any reason or for no reason, at any time. Any Officer may resign at any time by giving written notice to the Company, and such resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; provided that, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any such resignation shall be without prejudice to the rights, if any, of the Company or such Officer under this Agreement. A vacancy in any office because of death, resignation, removal or otherwise shall be filled by the Managing Member.

ARTICLE 8
TRANSFERS OF INTERESTS

Section 8.01. *Restrictions on Transfers.*

(a) Except as expressly permitted by Section 8.02, and subject to Section 8.01(b), Section 8.01(c), Section 8.01(d) and Section 8.01(e), any underwriter lock-up agreement applicable to such Member and/or any other agreement between such Member and the Company, Pubco or any of their Controlled Affiliates, without the prior written approval of the Managing Member, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto, including the right to vote or consent on any matter or to receive or have any economic interest in distributions or advances from the Company pursuant thereto, to any Person. Any such Transfer which is not in compliance with the provisions of this Agreement shall be deemed a Transfer by such Member of Units in violation of this Agreement (and a breach of this Agreement by such Member) and shall be null and void ab initio. Notwithstanding anything to the contrary in this Article 8, (i) Section 10.03 of this Agreement shall govern the exchange of LLC Units for shares of Class A Common Stock, and an exchange pursuant to, and in accordance with, Section 10.03 of this Agreement shall not be considered a “**Transfer**” for purposes of this Agreement, and (ii) any other Transfer of shares of Class A Common Stock shall not be considered a “**Transfer**” for purposes of this Agreement.

(b) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer otherwise permitted or approved pursuant to this Article 8 that:

(i) the Transferor shall have provided to the Company prior notice of such Transfer; and

(ii) the Transfer shall comply with all Applicable Laws and the Managing Member shall be reasonably satisfied that such Transfer will not result in a violation of the Securities Act.

(c) Notwithstanding any other provision of this Agreement to the contrary, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto if such Transfer, in the reasonable discretion of the Managing Member, would (i) materially increase the risk that the Company would be classified as a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder or (ii) reasonably be expected to create a material risk that the Company would have more than one hundred (100) partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3)).

(d) Any Transfer of Units pursuant to this Agreement, including this Article 8, shall be subject to the provisions of Section 3.01 and Section 3.02.

(e) If there is a Transfer of Units to Permitted Transferees pursuant to this Agreement, the Units held by each such Permitted Transferee shall be included in calculating the Substantial Ownership Requirement.

(f) Notwithstanding anything contained herein to the contrary, in no event shall any Member that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code Transfer any Units, unless such Member and the transferee have delivered to the Company, in respect of the relevant Transfer, written evidence that all required withholding under Section 1446(f) of the Code will have been done and duly remitted to the applicable taxing authority or duly executed certifications (prepared in accordance with the applicable Treasury Regulations or other authorities) of an exemption from such withholding.

Section 8.02. *Certain Permitted Transfers*. Notwithstanding anything to the contrary herein but subject to Section 8.01(b) and Section 8.01(c), the following Transfers shall be permitted:

(a) Any Transfer in connection with the Reorganization;

(b) Any Transfer by any Member of its Units pursuant to a Disposition Event (as such term is defined in the certificate of incorporation of Pubco);

(c) At any time, any Transfer by any Member of Units to any Transferee approved in writing by the Managing Member (not to be unreasonably withheld), it being understood that it shall be reasonable for the Managing Member to withhold such consent if the Managing Member reasonably determines that such Transfer would materially increase the risk that the Company would be classified as a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder; and

(d) The Transfer of all or any portion of a Non-Pubco Member’s Units to a Permitted Transferee of such Member.

Section 8.03. *Distributions.* Notwithstanding anything in this Article 8 or elsewhere in this Agreement to the contrary, if a Member Transfers all or any portion of its Units after the designation of a record date and declaration of a distribution pursuant to Article 5 and before the payment date of such distribution, the transferring Member (and not the Person acquiring all or any portion of its LLC Units) shall be entitled to receive such distribution in respect of such transferred LLC Units.

Section 8.04. *Registration of Transfers.* When any Units are Transferred in accordance with the terms of this Agreement, the Company shall cause such Transfer to be registered on the books of the Company.

ARTICLE 9

CERTAIN OTHER AGREEMENTS

Section 9.01. *Company Call Right.* In connection with any Involuntary Transfer by any Non-Pubco Member, the Company or the Managing Member may, in the Managing Member’s sole discretion, elect to purchase from such Member and/or such Transferee(s) in such Involuntary Transfer (if applicable) (each, a “**Call Member**”) any or all of the Units so Transferred or so held by such Member (or such Member’s Permitted Transferees), as applicable (“**Call Units**”), at any time by delivery of a written notice (a “**Call Notice**”) to such Call Member. The Call Notice shall set forth the Unit Redemption Price and the proposed closing date of such purchase of such Call Units; provided that such closing date shall occur within ninety (90) days following the date of such Call Notice. At the closing of any such sale, in exchange for the payment by the Company or the Managing Member to such Call Members of the Unit Redemption Price in cash, (i) each Call Member shall deliver its Call Units, duly endorsed, or accompanied by written instruments of transfer in form satisfactory to the Company or the Managing Member, as applicable, duly executed by such Call Member and accompanied by all requisite transfer taxes, if any, (ii) such Call Units shall be free and clear of any Liens and (iii) each Call Member shall so represent and warrant and further represent and warrant that it is the sole beneficial and record owner of such Call Units. Following such closing, any such Call Member shall no longer be entitled to any rights in respect of its Call Units, including any distributions of the Company or Pubco thereupon (other than the payment of the Unit Redemption Price at such closing), and, to the extent any such Call Member does not hold any Units thereafter, shall thereupon cease to be a Member of the Company and, to the extent any such Call Member does not hold any shares of Pubco Common Stock thereafter, shall thereupon cease to be a stockholder of Pubco.

- (a) No Person shall have any preemptive, preferential or other similar right with respect to (i) additional Capital Contributions;
- (ii) issuances or sales by the Company of any class or series of Units, whether unissued or hereafter created; (iii) issuances of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any Units; (iv) issuances of any right of subscription to or right to receive, or any warrant or option for the purchase of, any Units; or
- (v) issuances or sales of any other securities that may be issued or sold by the Company.

ARTICLE 10

REDEMPTION AND EXCHANGE RIGHTS

Section 10.01. *Redemption Right of a Member.*

(a) Without the need for approval by the Managing Member or consent by any other Members, each Non-Pubco Member shall be entitled to cause the Company to redeem (a “**Redemption**”) all or any portion of its LLC Units (the “**Redemption Right**”) at any time; provided that the Managing Member may force a Member to exercise its Redemption Right at any time following the expiration of such contractual lock-up period if such member holds fewer than _____ LLC Units. A Member desiring to exercise its Redemption Right (the “**Redeeming Member**”) shall exercise such right by giving written notice (the “**Redemption Notice**”) to the Company and Pubco in substantially the form of Exhibit A attached hereto. The Redemption Notice shall specify the number of LLC Units (the “**Redeemed Units**”) that the Redeeming Member intends to have the Company redeem (*provided*, that absent a waiver by the Managing Member, any such Redemption is for a minimum of the lesser of _____ LLC Units or all of the LLC Units held by such Redeeming Member) and a date, not less than three (3) Business Days nor more than ten (10) Business Days after delivery of such Redemption Notice (unless and to the extent that the Managing Member in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the “**Redemption Date**”); provided that the Company, Pubco and the Redeeming Member may change the number of Redeemed Units and/or the Redemption Date specified in such Redemption Notice to another number and/or date by mutual agreement signed in writing by each of them; provided further that a Redemption Notice may be conditioned by the Redeeming Member on the closing of an underwritten or non-underwritten distribution or sale of the shares of Class A Common Stock that may be issued in connection with such proposed Redemption. Unless the Redeeming Member has revoked or delayed a Redemption as provided in Section 10.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) the Redeeming Member shall transfer and surrender the Redeemed Units to the Company, free and clear of all Liens, and (ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 10.01(b), and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Units equal to the difference (if any) between the number of Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 10.01(a) and the Redeemed Units.

(b) In exercising its Redemption Right, a Redeeming Member shall be entitled to receive the number of shares of Class A Common Stock equal to the number of Redeemed Units (the “**Share Settlement**”) or immediately available funds in U.S. dollars in an amount equal to the Redeemed Units Equivalent to the extent there are such funds available from a consummated public offering or private sale of shares of Class A Common Stock by Pubco (the “**Cash Settlement**”); provided that Pubco shall have the sole and exclusive right and option as provided in Section 10.02 and subject to Section 10.01(d) to select whether the redemption payment is made by means of a Share Settlement or a Cash Settlement. Within three (3) Business Days of delivery of the Redemption Notice, Pubco shall give written notice (the “**Contribution Notice**”) to the Company (with a copy to the Redeeming Member) of its intended settlement method; provided that if Pubco does not timely deliver a Contribution Notice, Pubco shall be deemed to have elected the Share Settlement method. If Pubco elects the Cash Settlement method, the Redeeming Member may retract its Redemption Notice by giving written notice (the “**Retraction Notice**”) to the Company (with a copy to Pubco) within ten (10) Business Days of delivery of the Contribution Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member’s, Company’s and Pubco’s rights and obligations under this Section 10.01 arising from the Redemption Notice. For the avoidance of doubt, the Company shall have no obligation to make a Cash Settlement that exceeds the cash contributed to the Company by Pubco from Pubco’s offering or sales of Class A Common Stock referenced in this Section 10.01(b).

(c) In the event that Pubco elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists: (i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective; (ii) Pubco shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption; (iii) Pubco shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption; (iv) Pubco shall have disclosed to such Redeeming Member any material non-public information concerning Pubco, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and Pubco does not permit disclosure); (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC; (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Authority that restrains or prohibits the Redemption; (viii) if the Redeeming Member is a party to the Registration Rights Agreement, Pubco shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such redemption pursuant to an effective registration statement; (ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, any “black-out” or similar period under Pubco’s policies covering

trading in the Pubco's securities to which the applicable Redeeming Member is subject, which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement; provided further, that in no event shall the Redeeming Member seeking to revoke its Redemption Notice or delay the consummation of such Redemption and relying on any of the matters contemplated in clauses (i) through (ix) above have Controlled or intentionally materially influenced any facts, circumstances, or Persons in connection therewith (except in the good faith performance of his or her duties as an officer or director of Pubco) in order to provide such Redeeming Member with a basis for such delay or revocation. If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 10.01(c), the Redemption Date shall occur on the fifth Business Day following the date on which the conditions giving rise to such delay cease to exist (or such earlier day as Pubco, the Company and such Redeeming Member may agree in writing).

(d) The number of shares of Class A Common Stock or the Redeemed Units Equivalent that a Redeeming Member is entitled to receive under Section 10.01(b) (whether through a Share Settlement or Cash Settlement, as determined by Pubco) shall not be adjusted on account of any distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; provided, however, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any distribution with respect to the Redeemed Units but prior to payment of such distribution, the Redeeming Member shall be entitled to receive such distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member transferred and surrendered the Redeemed Units to the Company prior to such date (but in each case only if Pubco has declared a corresponding dividend of all amounts receivable by Pubco in such distribution with a record date for such dividend that is no later than the record date for such distribution).

(e) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then in exercising its Redemption Right a Redeeming Member shall be entitled to receive the amount of such security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

Section 10.02. Election and Contribution of Pubco. In connection with the exercise of a Redeeming Member's Redemption Rights under Section 10.01(a), Pubco shall contribute to the Company the consideration the Redeeming Member is entitled to receive under Section 10.01(b). Pubco, at its sole and exclusive option, shall determine whether to contribute, pursuant to Section 10.01(b), the Share Settlement or the Cash Settlement. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 10.01(b), or has revoked or delayed a Redemption as provided in Section 10.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) Pubco shall make its Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement) required under this Section 10.02, and (ii) the Company shall issue to Pubco a number of Units equal to the number of Redeemed Units surrendered by the Redeeming Member. The timely delivery of a Retraction Notice shall terminate all of the Company's and Pubco's rights and obligations under this Section 10.02 arising from the Redemption Notice.

Section 10.03. *Exchange Right of Pubco.*

(a) Notwithstanding anything to the contrary in this Article 10, Pubco may, in its sole and absolute discretion, elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement or Cash Settlement, as the case may be, through a direct exchange of such Redeemed Units and such consideration between the Redeeming Member and Pubco (a “**Direct Exchange**”). Upon such Direct Exchange pursuant to this Section 10.03, Pubco shall acquire the Redeemed Units and shall be treated for all purposes of this Agreement as the owner of such Units.

(b) Pubco may, at any time prior to a Redemption Date, deliver written notice (an “**Exchange Election Notice**”) to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; provided that such election does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by Pubco at any time; provided that any such revocation does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all the Redeemed Units that would have otherwise been subject to a Redemption. Except as otherwise provided by this Section 10.03, a Direct Exchange shall be consummated pursuant to the same timeframe and in the same manner as the relevant Redemption would have been consummated if Pubco had not delivered an Exchange Election Notice.

Section 10.04. *Tender Offers and Other Events with Respect to Pubco.*

(a) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to Class A Common Stock (a “**Pubco Offer**”) is proposed by Pubco or is proposed to Pubco or its stockholders or is otherwise effected or to be effected, the Non-Pubco Members shall be permitted to participate in such Pubco Offer by delivery of a notice of exchange (which notice of exchange shall be effective immediately prior to the consummation of such Pubco Offer (and, for the avoidance of doubt, shall be contingent upon such Pubco Offer and not be effective if such Pubco Offer is not consummated)). In the case of a Pubco Offer proposed by Pubco, Pubco will use its reasonable efforts expeditiously and in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit the holders of LLC Units (other than the Pubco Members) to participate in such Pubco Offer to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock without discrimination; provided, that without limiting the generality of this sentence, Pubco will use its reasonable efforts expeditiously and in good faith to ensure that such holders may participate in each such Pubco Offer without being required to exchange LLC Units to the extent such participation is practicable. For the avoidance of doubt (but subject to Section 10.04(c)), in no event shall the holders of LLC Units be entitled to receive in such Pubco Offer aggregate consideration (other than pursuant to the Tax Receivable Agreement) for each LLC Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer.

(b) Notwithstanding any other provision of this Agreement, if a Disposition Event (as such term is defined in the Pubco certificate of incorporation) is approved by the board of directors of Pubco and consummated in accordance with Applicable Law, at the request of the Company (or following such Disposition Event, its successor) or Pubco (or following such Disposition Event, its successor), each of the holders of LLC Units shall be required to exchange with Pubco, at any time and from time to time after, or simultaneously with, the consummation of such Disposition Event, all of such holder's LLC Units for aggregate consideration for each LLC Unit that is equivalent to the consideration payable in respect of each share of Class A Common Stock in connection with the Disposition Event.

(c) Notwithstanding any other provision of this Agreement, in a Disposition Event, payments under or in respect of the Tax Receivable Agreement shall not be considered part of the consideration payable in respect of any LLC Unit or share of Class A Common Stock in connection with such Disposition Event for the purposes of Section 10.04(a) and Section 10.04(b).

Section 10.05. *Reservation of Shares of Class A Common Stock; Certificate of Pubco.* At all times Pubco shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption or Direct Exchange pursuant to Share Settlements; provided that nothing contained herein shall be construed to preclude Pubco from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of Pubco) or the delivery of cash pursuant to a Cash Settlement. Pubco shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Redemption or Direct Exchange to the extent a registration statement is effective and available for such shares. Pubco covenants that all Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article 10 shall be interpreted and applied in a manner consistent with the corresponding provisions of the certificate of incorporation of Pubco.

Section 10.06. *Effect of Exercise of Redemption or Exchange Right.* This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption or Direct Exchange shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 10.07. *Tax Treatment.*

(a) Unless otherwise required by applicable Law, the parties hereto acknowledge and agree that any Redemption or Direct Exchange consummated hereunder shall be treated as a taxable sale of Redeemed Units by the Redeeming Member to Pubco for U.S. federal, and applicable state and local income tax purposes, and no party shall take a contrary position on any income tax return, amendment thereof or communication with a taxing authority unless an alternate position is permitted under the Code and Treasury Regulations and Pubco consents in writing.

(b) Notwithstanding any other provision in this Agreement, the Company, Pubco and their agents and affiliates shall have the right to deduct and withhold taxes (including Class A Common Stock with a fair market value determined in the sole discretion of the Pubco equal to the amount of such taxes) from any payments to be made pursuant to any Redemption or Direct Exchange consummated hereunder if, in their opinion, such withholding is required by law, and shall be provided with any necessary tax forms, including Form W-9 or the appropriate series of Form W-8, as applicable, and any similar information; provided, that Pubco may, in its sole discretion, allow or require a Redeeming Member to pay such taxes owed in respect of the Redemption or Direct Exchange in cash in lieu of withholding or deducting such taxes. To the extent that any of the aforementioned amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the recipient of the payments in respect of which such deduction and withholding was made. To the extent that any payment pursuant to any Redemption or Direct Exchange consummated hereunder is not reduced by such deductions or withholdings, such recipient shall indemnify the applicable withholding agent for any amounts imposed by any taxing authority together with any costs and expenses related thereto.

Section 10.08. *Additional Exchange Restrictions.* Notwithstanding anything to the contrary herein:

(a) No Exchange shall be permitted (and, if attempted, shall be void ab initio) if, in the good faith determination of the Managing Member or the Company, such an Exchange would pose a material risk that the Company would be a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder.

(b) The Company reasonably believes that, as of the date hereof, it satisfies the “safe harbor” requirements under Treasury Regulation Section 1.7704-1(h) (the “**100 Partner Safe Harbor**”) and the Company will not take any action or consent to any action that would reasonably be expected to result in the Company not satisfying the 100 Partner Safe Harbor for any taxable year. If the Managing Member determines at any time, in its sole discretion after consultation with the Company’s tax advisors, either (i) that the Company does not then satisfy the 100 Partner Safe Harbor, or (ii) there is a reasonable possibility that the Company will not satisfy the 100 Partner Safe Harbor at any time during the current or next taxable year, the Managing Member and the Company may impose such restrictions on, and impose such requirements on and procedures with respect to, Exchanges from time to time as the Managing Member and/or the Company may determine, in their sole discretion, to be necessary or advisable so that the Company is not treated as a “publicly traded partnership” under Section 7704 of the Code and such restrictions, requirements and procedures shall remain in effect unless and until the Managing Member determines otherwise; provided, that, for the avoidance of doubt, a transfer described under Treasury Regulation Section 1.7704-1(e)(2) shall not be restricted. Without limiting the discretion of the Managing Member and/or the Company under this Section 10.08(b) to impose any restrictions, requirements or procedures on Exchanges, such restrictions, requirements and procedures may include one or more of the following:

(i) providing that Members are permitted to effect Exchanges during a taxable year of the Company only on one or more of up to four specified dates determined by the Managing Member (each a “**Specified Exchange Date**”);

(ii) requiring a Member seeking to effect an Exchange to give the Company irrevocable written notice of an election to effect an Exchange on a date that is at least sixty (60) calendar days prior to the Specified Exchange Date on which such Exchange is to occur; and

(iii) providing that the number of Units that may be Exchanged or otherwise transferred during the taxable year of the Company (other than in private transfers described in Treasury Regulations Section 1.7704-1(e)) cannot exceed 10 percent of the total interest in the Company's capital or profits (as determined pursuant to Treasury Regulation Section 1.7704-1(k)).

(c) Pubco shall bear all of its own expenses in connection with the consummation of any Redemption, whether or not any such Redemption is ultimately consummated, including any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Redemption (but not, in any case, any income taxes or other similar taxes); provided, however, that if any of the Share Settlement is to be delivered in a name other than that of the Redeeming Member that requested the Redemption, then such Redeeming Member and/or the Person in whose name such shares are to be delivered shall pay to Pubco the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Redemption or shall establish to the reasonable satisfaction of Pubco that such tax has been paid or is not payable. Except as otherwise may separately be agreed by the Company, the Redeeming Member shall bear all of its own expenses in connection with the consummation of any Redemption (including, for the avoidance of doubt, expenses incurred by such Redeeming Member in connection with any Redemption that are invoiced to the Company).

(d) In connection with any Redemption or Direct Exchange, an equal number of shares of Class B Common Stock shall be surrendered and cancelled in accordance with the certificate of incorporation of Pubco.

ARTICLE 11

LIMITATION ON LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 11.01. *Limitation on Liability.* The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company; provided that the foregoing shall not alter a Member's obligation to return funds wrongfully distributed to it.

Section 11.02. *Exculpation and Indemnification; Elimination of Fiduciary Duties.*

(a) Subject to the duties of the Managing Member and Officers set forth in Section 7.01, neither the Managing Member nor any other Covered Person shall be liable, including under any legal or equitable theory of fiduciary duty or other theory of liability, to the Company or to any other Covered Person for any losses, claims, damages or liabilities incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company. There shall be, and each Covered Person shall be entitled to, a presumption that

such Covered Person acted in good faith. None of the Members shall have any fiduciary duties to any other Member, the Company or any other Person, and any duties or implied duties (including fiduciary duties) of any Member to any other Member or the Company that would otherwise apply at law (common or statutory) or in equity are hereby eliminated to the fullest extent permitted under any Applicable Law.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such Person's professional or expert competence.

(c) The Company shall indemnify, defend and hold harmless each Covered Person against any losses, claims, damages, liabilities, expenses (including all reasonable out-of-pocket fees and expenses of counsel and other advisors), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, in which such Covered Person may be involved or become subject to, in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document, unless such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount (i) is a result of a Covered Person not acting in good faith on behalf of the Company or arose as a result of the willful commission by such Covered Person of any act that is dishonest and materially injurious to the Company, (ii) results from its contractual obligations under any Reorganization Document to be performed in a capacity other than as a Covered Person or from the breach by such Covered Person of Section 9.01 or (iii) results from the breach by any Member (in such capacity) of its contractual obligations under this Agreement. If any Covered Person becomes involved in any capacity in any action, suit, proceeding or investigation in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document (other than any Reorganization Document), other than (x) by reason of any act or omission performed or omitted by such Covered Person that was not in good faith on behalf of the Company or constituted a willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company or (y) as a result of any breach by such Covered Person of Section 9.01, the Company shall reimburse such Covered Person for its reasonable legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; provided that such Covered Person shall promptly repay to the Company the amount of any such reimbursed expenses paid to it if it shall be finally judicially determined that such Covered Person was not entitled to indemnification by, or contribution from, the Company in connection with such action, suit, proceeding or investigation. If for any reason (other than the bad faith of a Covered Person or the willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company) the foregoing indemnification is unavailable to such Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount in such proportion as is appropriate to reflect any relevant equitable considerations. There shall be, and each Covered Person shall be entitled to, a rebuttable presumption that such Covered Person acted in good faith.

(d) The obligations of the Company under Section 11.02(c) shall be satisfied solely out of and to the extent of the Company's assets, and no Covered Person shall have any personal liability on account thereof.

(e) Given that certain Jointly Indemnifiable Claims may arise by reason of the service of a Covered Person to the Company and/or as a director, trustee, officer, partner, member, manager, employee, consultant, fiduciary or agent of other corporations, limited liability companies, partnerships, joint ventures, trusts, employee benefit plans or other enterprises Controlled by the Company (collectively, the "**Controlled Entities**"), or by reason of any action alleged to have been taken or omitted in any such capacity, the Company acknowledges and agrees that the Company shall be fully and primarily responsible for the payment to the Covered Person in respect of indemnification or advancement of all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements) in each case, actually and reasonably incurred by or on behalf of a Covered Person in connection with either the investigation, defense or appeal of a claim, demand, action, suit or proceeding or establishing or enforcing a right to indemnification under this Agreement or otherwise incurred in connection with a claim that is indemnifiable hereunder (collectively, "**Expenses**") in connection with any such Jointly Indemnifiable Claim, pursuant to and in accordance with (as applicable) the terms of (i) the Delaware Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership, certificate of qualification or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the "**Indemnification Sources**"), irrespective of any right of recovery the Covered Person may have from the Indemnitee-Related Entities. Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Indemnitee-Related Entities and no right of advancement or recovery the Covered Person may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Indemnitee-Related Entities shall make any payment to the Covered Person in respect of indemnification or advancement of Expenses with respect to any Jointly Indemnifiable Claim, (i) the Company shall, and to the extent applicable shall cause the Controlled Entities to, reimburse the Indemnitee-Related Entity making such payment to the extent of such payment promptly upon written demand from such Indemnitee-Related Entity, (ii) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (i), the Indemnitee-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (iii) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnitee-Related Entities effectively to bring suit to enforce such rights. The Company and the Covered Person agree that each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Section 11.02(e), entitled to enforce this Section 11.02(e) as though each such Indemnitee-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section

11.02(e) as though each such Controlled Entity was the “Company “ under this Agreement. For purposes of this Section 11.02(e), the following terms shall have the following meanings:

(i) The term “**Indemnitee-Related Entities**” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification or advancement of Expenses with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification or advancement obligation.

(ii) The term “**Jointly Indemnifiable Claims**” shall be broadly construed and shall include, without limitation, any claim, demand, action, suit or proceeding for which the Covered Person shall be entitled to indemnification or advancement of Expenses from both (i) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (ii) any Indemnitee-Related Entity pursuant to any other agreement between any Indemnitee-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Indemnitee-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Indemnitee-Related Entity, on the other hand.

(f) The rights conferred on any Covered Person by this Section 11.02 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of this Agreement, agreement, vote of members, by determination of the Managing Member or otherwise. Further, the Company shall have the power and authority to provide indemnification, advancement of expenses and other similar rights to other Persons (including by agreements with members of the board of directors of Pubco) as is approved by the Managing Member.

ARTICLE 12

DISSOLUTION AND TERMINATION

Section 12.01. *Dissolution.*

(a) The Company shall not be dissolved by the admission of Additional Members or Substitute Members pursuant to Section 3.02.

(b) No Member shall (i) resign from the Company prior to the dissolution and winding up of the Company except in connection with a Transfer of Units pursuant to the terms of this Agreement or (ii) take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Applicable Law, hereby waives any rights to take any such actions under Applicable Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Delaware Act.

(c) The Company shall be dissolved and its business wound up only upon the earliest to occur of any one of the following events (each a “Dissolution Event”):

- (i) The expiration of forty-five (45) days after the sale or other disposition of all or substantially all the assets of the Company;
- (ii) upon the approval of the Managing Member;
- (iii) the entry of a decree of dissolution of the Company under Section 18-802 of the Delaware Act; or
- (iv) at any time there are no members of the Company, unless the Company is continued in accordance with the Delaware Act.

(d) The death, retirement, resignation, expulsion, bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member of the Company shall not in and of itself cause dissolution of the Company.

Section 12.02. *Winding Up of the Company.*

(a) The Managing Member shall promptly notify the other Members of any Dissolution Event. Upon dissolution, the Company’s business shall be liquidated in an orderly manner. The Managing Member shall appoint a liquidating trustee to wind up the affairs of the Company pursuant to this Agreement. In performing its duties, the liquidating trustee is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Company in accordance with the Delaware Act and in any reasonable manner that the liquidating trustee shall determine to be in the best interest of the Members.

(b) The proceeds of the liquidation of the Company shall be distributed in the following order and priority:

- (i) first, to the creditors (including any Members or their respective Affiliates that are creditors) of the Company in satisfaction of all of the Company’s liabilities (whether by payment or by making reasonable provision for payment thereof, including the setting up of any reserves which are, in the judgment of the liquidating trustee, reasonably necessary therefor); and
- (ii) second, to the Members in the same manner as distributions under Section 5.03(b).

(c) *Distribution of Property.* In the event it becomes necessary in connection with the liquidation of the Company to make a distribution of Property in-kind, subject to the priority set forth in Section 12.02(b), the liquidating trustee shall have the right to compel each Member to accept a distribution of any Property in-kind (with such Property, as a percentage of

the total liquidating distributions to such Member, corresponding as nearly as possible to such Member's Percentage Interest), with such distribution being based upon the amount of cash that would be distributed to such Members if such Property were sold for an amount of cash equal to the fair market value of such Property, as determined by the liquidating trustee in good faith.

(d) In the event of a dissolution pursuant to Section 12.01(c), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 10.01(b) in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with Applicable Laws.

Section 12.03. *Termination*. The Company shall terminate when all of the assets of the Company, after payment of or reasonable provision for the payment of all debts and liabilities of the Company, shall have been distributed to the Members in the manner provided for in this Article 12, and the certificate of formation of the Company shall have been cancelled in the manner required by the Delaware Act.

Section 12.04. *Survival*. Termination, dissolution, liquidation or winding up of the Company for any reason shall not release any party from any liability which at the time of such termination, dissolution, liquidation or winding up already had accrued to any other party or which thereafter may accrue in respect to any act or omission prior to such termination, dissolution, liquidation or winding up.

ARTICLE 13

MISCELLANEOUS

Section 13.01. *Expenses*. Other than as provided for in the Tax Receivable Agreement, the Company shall (a) pay, or cause to be paid, all costs, fees, operating expenses, administrative expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company) incurred in pursuing and conducting, or otherwise related to, the business of the Company and (b) in the sole discretion of the Managing Member, reimburse the Managing Member for any out-of-pocket costs, fees and expenses incurred by it or its Subsidiaries in connection therewith. To the extent that the Managing Member reasonably determines in good faith that its expenses are related to the business conducted by the Company and/or its Subsidiaries, then the Managing Member may cause the Company to pay or bear all such expenses of the Managing Member or its Subsidiaries, including (i) costs of any securities offerings (including any underwriters discounts and commissions), investment or acquisition transaction (whether or not successful) not borne directly by Members, (ii) compensation and meeting costs of its board of directors, (iii) cost of periodic reports to its stockholders, (iv) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, Pubco, (v) accounting and legal costs, (vi) franchise taxes (which are not based on, or measured by, income), (vii) payments in respect of Indebtedness and preferred stock, to the extent the proceeds are used or will be used by Pubco or its Subsidiaries to pay expenses or other obligations described in this Section 13.01 (in either case only to the extent economically

equivalent Indebtedness or Equity Securities of the Company were not issued to Pubco or its Subsidiaries) and (viii) other fees and expenses in connection with the maintenance of the existence of Pubco and its Subsidiaries (including any costs or expenses associated with being a public company listed on a national securities exchange), provided that the Company shall not pay or bear any income tax obligations of the Managing Member or its Subsidiaries pursuant to this provision. Payments under this Section 13.01 are intended to constitute reasonable compensation for past or present services and are not “distributions” within the meaning of Section 5.03 above or §18-607 of the Delaware Act.

Section 13.02. *Further Assurances.* Each Member agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Managing Member, may be necessary or advisable to carry out the intent and purposes of this Agreement.

Section 13.03. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including electronic mail transmission of attachments to such electronic mail in portable document format (“**e-mail**”), so long as a receipt of such e-mail is requested and received) and shall be given to such party at the address or e-mail address specified for such party on the Member Schedule hereto, or to such other address as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt. All such notices, requests and other communications to any party hereunder shall be given to such party as follows:

If to Pubco or the Company:

c/o PHD Group Holdings LLC
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: [REDACTED]

With copies (which shall not constitute actual notice) to:

Weil, Gotshal & Manges, LLP
100 Federal Street, 34th Floor
Boston, MA 02110
Attention: Shayla K. Harlev; Alexander D. Lynch; Michael Messina
Email: shayla.harlev@weil.com; alex.lynch@weil.com;
michael.messina@weil.com

Section 13.04. *Binding Effect; Benefit; Assignment.*

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Except as provided in Article 8, no Member may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Managing Member.

Section 13.05. *Jurisdiction*.

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 13.03 shall be deemed effective service of process on such party.

(b) EACH OF THE COMPANY AND THE MEMBERS HEREBY IRREVOCABLY DESIGNATES CORPORATION TRUST COMPANY (IN SUCH CAPACITY, THE “**PROCESS AGENT**”), WITH AN OFFICE AT CORPORATION TRUST COMPANY, 1209 ORANGE STREET, WILMINGTON, DELAWARE 19801, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 13.03 OF THIS AGREEMENT AND, TO THE EXTENT A MEMBER IS NOT ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE, AS REQUIRED BY THE LAW OF THE JURISDICTION OF ORGANIZATION OF SUCH MEMBER. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

Section 13.06. *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.07. *Counterparts*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 13.08. *Entire Agreement.* This Agreement and the Reorganization Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party, except to the extent provided herein with respect to Indemnitee Related Entities, each of whom are intended third-party beneficiaries of those provisions that specifically related to them with the right to enforce such provisions as if they were a party hereto.

Section 13.09. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 13.10. *Amendment.*

(a) This Agreement can be amended at any time and from time to time by written instrument signed by each of the Members who together own a majority in interest of the Units then outstanding, provided that no amendment to this Agreement may adversely modify in any material respect the Units (or the rights, preferences or privileges of the Units) then held by any Members in any materially disproportionate manner to those then held by any other Members without the prior written consent of a majority in interest of such disproportionately affected Member or Members.

(b) For the avoidance of doubt: (i) the Managing Member, acting alone, may amend this Agreement, including the Member Schedule, (x) to reflect the admission of new Members or Transfers of Units, each as provided by and in accordance with, the terms of this Agreement and (y) to effect any subdivisions or combinations of Units made in compliance with Section 4.02(c) and (z) to issue additional LLC Units or any new class of Units (whether or not *pari passu* with the LLC Units) in accordance with the terms of this Agreement and to provide that the Members being issued such new Units be entitled to the rights provided to Members; and (ii) any merger, consolidation or other business combination that constitutes a Disposition Event (as such term is defined in the certificate of incorporation of Pubco) in which the Non-Pubco Members are required to exchange all of their LLC Units pursuant to Section 10.03(b) of this Agreement and receive consideration in such Disposition Event in accordance with the terms of this Agreement and Section 10.04(b) of this Agreement shall not be deemed an amendment hereof; provided, that such amendment is only effective upon consummation of such Disposition Event.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 13.11. *Confidentiality.*

(a) Each Member shall, and shall direct those of its Affiliates and their respective directors, officers, members, stockholders, partners, employees, attorneys, accountants, consultants, trustees and other advisors (the “**Member Parties**”) who have access to Confidential Information to, keep confidential and not disclose any Confidential Information to any Person other than a Member Party who agrees to keep such Confidential Information confidential in accordance with this Section 13.11, in each case without the express consent, in the case of Confidential Information acquired from the Company, of the Managing Member or, in the case of Confidential Information acquired from another Member, such other Member, unless:

(i) such disclosure shall be required by Applicable Law;

(ii) such disclosure is reasonably required in connection with any tax audit involving the Company or any Member or its Affiliates;

(iii) such disclosure is reasonably required in connection with any litigation against or involving the Company or any Member;

(iv) such disclosure is reasonably required in connection with any proposed Transfer of all or any part of such Member’s Units in the Company; provided that with respect to any such use of any Confidential Information referred to in this clause (iv), advance notice must be given to the Managing Member so that it may require any proposed Transferee that is not a Member to enter into a confidentiality agreement with terms substantially similar to the terms of this Section 13.11 (excluding this clause (iv)) prior to the disclosure of such Confidential Information; or

(v) such disclosure is of financial and other information of the type typically disclosed to limited partners and limited liability company members (and prospective transferees or investors thereof) and is made to the partners or members of, and/or prospective investors in, Affiliates of the Members and such partner, Member or prospective investor is bound by the confidentiality provisions of a customary non-disclosure agreement entered into with the disclosing party that covers the Confidential Information so disclosed.

(b) “**Confidential Information**” means any information related to the activities of the Company, the Members and their respective Affiliates that a Member may acquire from the Company or the Members, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Member), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member by the Company, or (iii) becomes available to a Member on a non-confidential basis from a third party, provided such third party is not known by such Member, after reasonable inquiry, to be bound by this Agreement or another confidentiality agreement with the Company. Such Confidential

Information may include information that pertains or relates to the business and affairs of any other Member or any other Company matters. Confidential Information may be used by a Member and its Member Parties only in connection with Company matters and in connection with the maintenance of its interest in the Company.

(c) Subject to Section 13.11(d), in the event that any Member or any Member Parties of such Member is required to disclose any of the Confidential Information, such Member shall use reasonable efforts to provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Member shall use reasonable efforts to cooperate with the Company in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this Section 13.11, such Member and its Member Parties shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information shall be accorded confidential treatment.

(d) Notwithstanding anything in this Agreement to the contrary, (i) each Member may disclose to any persons the U.S. federal income tax treatment and tax structure of the Company and the transactions set out in the Reorganization Documents, (ii) nothing in this Agreement limits, restricts or in any other way affects any Member's communication with any Governmental Authority, or communication with any official or staff person of a Governmental Authority, concerning matters relevant to the Governmental Authority that do not constitute attorney-client privileged information of the Company or its Affiliates and (iii) no Member can be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigation a suspected violation of law or (y) in a complaint or other document filed under seal in a lawsuit or other proceeding. For purpose of the foregoing clause (i), "**tax structure**" is limited to any facts relevant to the U.S. federal income tax treatment of the Company and does not include information relating to the identity of the Company or any Member.

Section 13.12. *Governing Law.* This Agreement and all related claims shall be governed by, construed and enforced in accordance with the internal laws of the State of Delaware, without giving effect to any laws, provisions or rules (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 and without regard to any borrowing statute that would result in the application of the statutes of limitations or repose of any other jurisdiction. In furtherance of the foregoing, the laws of the State of Delaware will control even if under such jurisdiction's choice of law or conflict of law analysis, the substantive or procedural law of some other jurisdiction would ordinarily or necessarily apply.

ARTICLE 14

REPRESENTATIONS OF MEMBERS

Section 14.01. *Representations of Members.* Each Member (unless otherwise noted) to which a Unit is issued as of the date of this Agreement represents and warrants to the Company as follows:

(a) The Units issued to such Member, if any, are being acquired for investment for such Member's own account, not as a nominee or agent, and not with a view to or for sale in connection with the distribution thereof.

(b) Such Member has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the Member's investment in the Units; such Member has the ability to bear the economic risks of such investment; such Member has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement; and such Member has had an opportunity to ask questions and to obtain such financial and other information regarding the Company as such Member deems necessary or appropriate in connection with evaluating the merits of the investment in the Units. Such Member acknowledges that the Units have not been and will not be registered under the Securities Act or under any state securities act and may not be transferred except in compliance with the Securities Act and all applicable state laws.

(c) Each Member qualifies as an Accredited Investor within the meaning of Regulation D promulgated under the Securities Act or the acquisition of its interest otherwise qualifies under an applicable exemption from registration under the Securities Act.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amended and Restated Limited Liability Company Agreement to be duly executed as of the day and year first written above.

COMPANY:

PHD GROUP HOLDINGS LLC

By: _____
Name:
Title:

PUBCO MEMBER:

PORTILLO'S INC.

By: _____
Name:
Title:

[Signature Page to Second A&R Limited Liability Company Agreement]

SCHEDULE A

Member Schedule

Pubco Member	LLC Units
Portillo's Inc.	
Non-Pubco Members	LLC Units
Berkshire Fund VIII-A, LP	
Berkshire Fund VIII, LP	
Berkshire Investors III LLC	
Berkshire Investors IV LLC	
Broad Street Principal Investments Superholdco, L.L.C.	
Stone Street 2014, L.P.	
Bridge Street 2014, L.P.	
MBD 2014, L.P.	
CarboPIA Holdings, Inc.	

[Schedule A]

EXHIBIT A

[FORM OF]
REDEMPTION NOTICE

c/o PHD Group Holdings LLC
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: [REDACTED]

c/o Portillo's Inc.
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: [REDACTED]

Reference is hereby made to the Second Amended and Restated Limited Liability Company Agreement, dated as of _____, 2021 (as amended from time to time, the "LLC Agreement"), among Portillo's Inc., a Delaware corporation ("Pubco"), PHD Group Holdings LLC, a Delaware limited liability company (the "Company"), and the members from time to time party thereto (each, a "Member"). Capitalized terms used but not defined herein shall have the meanings given to them in the LLC Agreement.

Pursuant and subject to the terms of Article 10 of the LLC Agreement, the undersigned Member hereby transfers and surrenders to the Company the number of Units set forth below in exchange for shares of Class A Common Stock to be issued in its name.

Legal Name of Member: _____

Address: _____

Number of Units: _____

Limitation on Tax Benefit Payments under [Section 3.1(c)] of the Tax Receivable Agreement (Optional; may indicate a percentage, dollar figure or "none", and if left blank, will default to _____ of the initial Tax benefits resulting from the Redemption, as set forth in the Tax Receivable Agreement):

[Form of REDEMPTION NOTICE]

The undersigned hereby represents and warrants that (i) the undersigned has full legal capacity to execute and deliver this Redemption Notice and to perform the undersigned's obligations hereunder; (ii) this Redemption Notice has been duly executed and delivered by the undersigned and is the legal, valid and binding obligation of the undersigned enforceable against it in accordance with the terms thereof or hereof, as the case may be, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and the availability of equitable remedies; (iii) the Units subject to this Redemption Notice are being transferred to the Company free and clear of any pledge, lien, security interest, encumbrance, equities or claim; and (iv) no consent, approval, authorization, order, registration or qualification of any third party or with any court or governmental agency or body having jurisdiction over the undersigned or the Units subject to this Redemption Notice is required to be obtained by the undersigned for the transfer of such Units to the Company.

The undersigned hereby irrevocably constitutes and appoints any officer of Pubco or of the Company as the attorney of the undersigned, with full power of substitution and resubstitution in the premises, to do any and all things and to take any and all actions that may be necessary to transfer to the Company the Units subject to this Redemption Notice and to deliver to the undersigned the shares of Class A Common Stock to be delivered in exchange therefor.

Name:

Date:

[Signature Page to Redemption Notice]

FORM OF
REGISTRATION RIGHTS AGREEMENT

by and among

Portillo's Inc.

and

the other parties hereto

, 2021

TABLE OF CONTENTS

Section 1.	Certain Definitions	1
Section 2.	Registration Rights	5
	2.1. Demand Registrations	5
	2.2. Piggyback Registrations	9
	2.3. Holdback Agreements	10
	2.4. Registration Procedures	11
	2.5. Registration Expenses	16
	2.6. No Required Sale	16
	2.7. Indemnification	16
	2.8. Participation in Underwritten Registrations	20
	2.9. No Inconsistent Agreements	20
	2.10. Adjustments Affecting Registrable Securities	20
Section 3.	General	20
	3.1. Rule 144 and Rule 144A	20
	3.2. Nominees for Beneficial Owners	21
	3.3. Amendments and Waivers	21
	3.4. Notices	21
	3.5. Successors and Assigns	22
	3.6. Entire Agreement	22
	3.7. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial	22
	3.8. Interpretation; Construction	23
	3.9. Counterparts	23
	3.10. Severability	23
	3.11. Remedies	23
	3.12. Further Assurances	24
	3.13. Confidentiality	24
	3.14. Termination and Effect of Termination	25

Schedule I – Key Holders

Schedule II – Berkshire Persons

Exhibit A – Joinder

This REGISTRATION RIGHTS AGREEMENT (as may be amended, modified, supplemented or restated from time to time after the date hereof, this "Agreement"), is made as of _____, 2021, by and among (i) Portillo's Inc., a Delaware corporation (the "Company") and (ii) each of the Persons listed on the signature pages hereto.

WITNESSETH:

WHEREAS, the Board of Directors of the Company (the "Board") has determined to effect an underwritten initial public offering (the "IPO") of the Company's Class A Common Stock (as defined below); and

WHEREAS, in connection with the IPO, the parties desire to set forth certain registration rights applicable to the Registrable Securities.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Certain Definitions. As used herein, the following terms shall have the following meanings:

"Affiliate" means with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise. For the avoidance of doubt, neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any Holder.

"Agreement" has the meaning ascribed to such term in the Preamble.

"Beneficial Ownership" shall mean, with respect to a specified Person, the ownership of securities as determined in accordance with Rule 13d-3 of the Exchange Act, as such Rule is in effect from time to time. The terms "Beneficially Own" and "Beneficial Owner" shall have a correlative meaning.

"Berkshire" means collectively, the Persons set forth on Schedule II and any of their Permitted Transferees.

"Board" has the meaning ascribed to such term in the Preamble.

"Business Day" shall mean a day other than a Saturday, Sunday, or federal holiday or other day on which commercial banks in the City of New York are authorized or required by law or other governmental action to close.

"Claims" has the meaning ascribed to such term in Section 2.7(a).

"Class A Common Stock" shall mean the shares of Class A Common Stock, \$0.001 par value per share, of the Company, and any and all securities of any kind whatsoever which may be issued after the date hereof in respect of, or in exchange for, such shares of common stock of the Company pursuant to a merger, consolidation, stock split, stock dividend or recapitalization of the Company or otherwise.

“Common Stock Equivalents” means all options, warrants, LLC Units and other securities convertible into, or exchangeable or exercisable for (at any time or upon the occurrence of any event or contingency and without regard to any vesting or other conditions to which such securities may be subject) shares of capital stock or other equity securities of such Person (including, without limitation, any note or debt security convertible into or exchangeable for shares of capital stock or other equity securities of such Person).

“Company” has the meaning ascribed to such term in the Preamble.

“Demand Exercise Notice” has the meaning ascribed to such term in Section 2.1(a).

“Demand Registration” has the meaning ascribed to such term in Section 2.1(a).

“Demand Registration Request” has the meaning ascribed to such term in Section 2.1(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

“Expenses” means any and all fees and expenses incident to the Company’s performance of or compliance with Article 2, including, without limitation: (i) SEC, stock exchange or FINRA, and all other registration and filing fees and all listing fees and fees with respect to the inclusion of securities on the Nasdaq Global Select Market or on any other securities market on which the Class A Common Stock is listed or quoted, (ii) fees and expenses of compliance with state securities or “blue sky” laws of any state or jurisdiction of the United States or compliance with the securities laws of foreign jurisdictions and in connection with the preparation of a “blue sky” survey, including, without limitation, reasonable fees and expenses of outside “blue sky” counsel and securities counsel in foreign jurisdictions, (iii) word processing, printing and copying expenses, (iv) messenger and delivery expenses, (v) expenses incurred in connection with any road show, (vi) fees and disbursements of counsel for the Company, (vii) with respect to each registration or underwritten offering, the reasonable fees and disbursements of counsel for the Participating Holder(s); provided that, such fees of Berkshire and each other Participating Holder shall not exceed \$75,000 per registration or underwritten offering, (viii) fees and disbursements of all independent public accountants (including the expenses of any audit and/or comfort letter and updates thereof) and fees and expenses of other Persons, including special experts, retained by the Company, (ix) fees and expenses payable to any Qualified Independent Underwriter, (x) any other fees and disbursements of underwriters, if any, customarily paid by issuers or sellers of securities, including reasonable fees and expenses of counsel for the underwriters in connection with any filing with or review by FINRA (excluding, for the avoidance of doubt, any underwriting discount, commissions, or spread), (xi) fees and expenses of any transfer agent or custodian and (xii) expenses for securities law liability insurance and any rating agency fees.

“Family Member” means, with respect to any Person who is an individual, any spouse, parent, siblings or lineal descendants of such Person (including adoptive relationships) and any trust or other estate planning vehicle over which such Person has “control” (as defined in the definition of “Affiliate”) established for the benefit of such Person and/or such Person’s spouse and/or such Person’s descendants (by birth or adoption), parents, siblings or dependents.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Goldman Sachs” means collectively, _____ and their Permitted Transferees.

“Holder(s)” means (1) any Person who is a signatory to this Agreement (other than the Company), or (2) any Permitted Transferee to whom any such Person who is a signatory to this Agreement shall assign or transfer any rights hereunder; provided that in the case of clause (2), such Person or such transferee, as applicable, has executed and delivered to the Company a joinder agreement in the form of Exhibit A hereto, and has thereby agreed in writing to be bound by this Agreement in respect of such Registrable Securities.

“Incidental Registration Notice” has the meaning ascribed to such term in Section 2.2(a).

“Initiating Holder(s)” has the meaning ascribed to such term in Section 2.1(a).

“IPO” has the meaning ascribed to such term in the Preamble.

“Key Holders” means the parties set forth on Schedule I hereto and any of their respective Permitted Transferees.

“Law” means any law (including common law), statute, code, ordinance rule or regulation of any governmental entity.

“Litigation” means any action, proceeding or investigation in any court or before any governmental authority.

“LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of PHD Group Holdings LLC, a Delaware limited liability company.

“LLC Unit” means a limited liability interest in PHD Group Holdings LLC or any other class of limited liability interests in PHD Group Holdings LLC.

“Lock-Up Agreement” means any agreement entered into by a Holder that provides for restrictions on the transfer of Registrable Securities held by such Holder.

“Long Form Registrations” has the meaning ascribed to such term in Section 2.1(a).

“Majority Participating Holders” means Participating Holders holding more than 50% of the Registrable Securities proposed to be included in any offering of Registrable Securities by such Participating Holders pursuant to Section 2.1 or Section 2.2.

“Opt-Out Request” has the meaning ascribed to such term in Section 3.13(c).

“Participating Holders” means all Holders of Registrable Securities which are proposed to be included in any offering of Registrable Securities pursuant to Section 2.1 or Section 2.2.

“Permitted Transferee” (a) in the case of a Holder who is an individual, (i) any executor, administrator or testamentary trustee of such Holder’s estate if such Holder dies, (ii) any Person receiving Registerable Securities of such Holder by will, intestacy laws or the laws of descent or survivorship, (iii) any trustee of a trust (including an inter vivos trust) of which there are no principal beneficiaries other than such Holder or one or more Family Members of such Holder over which such Holder has “control” (as defined in the definition of “Affiliate”), or (iv) any private foundation or similar charitable organization over which such Holder has “control” (as defined in the definition of “Affiliate”) and (b) in the case of a Holder that is not an individual, its Affiliates.

“Person” means any individual, corporation (including not for profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, joint-stock company, unincorporated organization, governmental entity or agency or other entity of any kind or nature.

“Piggyback Registration” has the meaning ascribed to such term in Section 2.2(a).

“Policies” has the meaning ascribed to such term in Section 3.13(b).

“Qualified Independent Underwriter” means a “qualified independent underwriter” within the meaning of FINRA Rule 5121.

“Registrable Securities” means (a) any shares of Class A Common Stock held by the Holders at any time (including those held as a result of, or issuable upon, the Exchange, conversion or exercise of Common Stock Equivalents), whether now owned or acquired by the Holders at a later time, (b) any shares of Class A Common Stock issued or issuable, directly or indirectly, in exchange for or with respect to the Class A Common Stock referenced in clause (a) above by way of stock dividend, stock split or combination of shares in connection with a reclassification, recapitalization, merger, share exchange, consolidation or other reorganization and (c) any securities issued in replacement of or exchange for any securities described in clause (a) or (b) above. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (A) a registration statement with respect to the sale of such securities shall have been declared effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (B) such securities are able to be immediately sold pursuant to Rule 144 without restrictions as to volume limitations and (C) such securities are otherwise transferred or sold, the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a legend and such securities may be resold without subsequent registration under the Securities Act.

“Rule 144” and “Rule 144A” have the meaning ascribed to such term in Section 3.1.

“SEC” means the Securities and Exchange Commission or such other federal agency which at such time administers the Securities Act.

“Section 3.13 Representatives” has the meaning ascribed to such term in Section 3.13(b).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

“Shelf Offering” has the meaning ascribed to such term in Section 2.1(c)(ii).

“Shelf Registration Statement” means a shelf registration statement filed under Rule 415 of the Securities Act.

“Short Form Registration” has the meaning ascribed to such term in Section 2.1(a).

“Subsidiary” means any direct or indirect subsidiary of the Company on the date hereof and any direct or indirect subsidiary of the Company organized or acquired after the date hereof.

“Take-Down Notice” has the meaning ascribed to such term in Section 2.1(c)(ii).

“Underwritten Block Trade” means an offering and/or sale of Registrable Securities by one or more of Berkshire and Goldman Sachs on an underwritten block trade basis (whether firm commitment or otherwise) without substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

“Valid Business Reason” has the meaning ascribed to such term in Section 2.1(e).

Section 2. Registration Rights.

2.1. Demand Registrations.

(a) Demand Registrations Generally. This Section 2.1 sets forth the terms pursuant to which Berkshire may request registration under the Securities Act of all or any portion of the Registrable Securities held by such Holders on Form S-1 or similar long form registration (“Long Form Registration”) and the Key Holders may request registration under the Securities Act of all or any portion of the Registrable Securities held by such Key Holders on Form S-3 or any similar short form registration (“Short Form Registration”), if available. All registrations requested pursuant to this Section 2.1 are referred to herein as “Demand Registrations.” If the Company shall receive a written request that the Company file a Long Form Registration or with respect to all or a portion of the Registrable Securities (a “Demand Registration Request”) and the sender(s) of such request pursuant to this Agreement shall be known as the “Initiating Holder(s)”), then the Company shall, within ten (10) Business Days of the receipt thereof, give written notice (the “Demand Exercise Notice”) of such request to all other Holders, and, subject to the limitations of this Section 2.1, use its reasonable best efforts to effect, as soon as practicable, the registration under the Securities Act (including, without limitation, by means of a Shelf Registration Statement thereunder if so requested and if the Company is then eligible to use such a registration) of all Registrable Securities that the Holders request to be registered. Each request for a Demand Registration shall specify the approximate number of Registrable Securities requested to be registered.

(b) Long Form Registrations. At any time that the Company is not legally eligible to file a registration statement with the SEC on Form S-3 or any similar short form registration statement, Berkshire shall be entitled to request three (3) Long Form Registrations subject to Section 2.1(e), and the Company shall effect such Long Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with such Long Form Registrations.

(c) Short Form Registrations.

(i) In addition to the Long Form Registrations provided pursuant to Section 2.1(b), each Key Holder shall be entitled to request an unlimited number of Short Form Registrations, the Company shall effect such Short Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with any such Short Form Registration. The Company shall use its best efforts to make Short Form Registrations on Form S-3 available for the sale of Registrable Securities and if Short Form Registrations on Form S-3 are available for the sale of Registrable Securities, Berkshire may only request registration on Form S-3 and not on Form S-1.

(ii) At any time that any Short Form Registration is effective, if any Holder or group of Holders holding Registrable Securities delivers a notice to the Company (a "Take-Down Notice") stating that it intends to effect an underwritten offering or distribution of all or part of its Registrable Securities included by it on any Short Form Registration (a "Shelf Offering") and stating the number of the Registrable Securities to be included in the Shelf Offering, then the Company shall amend or supplement the Short Form Registration as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Offering (taking into account the inclusion of Registrable Securities by any other Holders thereof pursuant to this Section 2.1(c)(ii)). In connection with any Shelf Offering, the Company shall, promptly after receipt of a Take-Down Notice, deliver such notice to all other Holders of Registrable Securities included in any Short Form Registration and permit each Holder to include its Registrable Securities included on a Short Form Registration in the Shelf Offering if such Holder notifies the proposing Holders and the Company within two (2) Business Days after delivery of the Take-Down Notice to such Holder, and in the event that the managing underwriter advises the Holders of such securities in writing that in its or their view the total number or dollar amount of Registrable Securities proposed to be sold in such offering is such as to adversely affect the success of such offering (including, without limitation, securities proposed to be included by other Holders of securities entitled to include securities in such offering pursuant to piggyback registration rights described in Section 2.2 hereof), the managing underwriter may limit the number of shares which would otherwise be included in such Shelf Offering in the same manner as is described in Section 2.1(d).

(iii) Notwithstanding the foregoing, if either of Berkshire or Goldman Sachs wishes to engage in an Underwritten Block Trade off of a Shelf Registration Statement on Form S-3 (either through filing an automatic shelf registration statement or through a take-down from an already existing Shelf Registration Statement), then notwithstanding the foregoing time periods, the Initiating Holder only needs to notify the Company of the Underwritten Block Trade not less than (i) five (5) Business Days prior to the day such offering is first anticipated to commence, in the case of a take-down from an already existing Shelf Registration Statement on Form S-3, or (ii) twenty (20) Business Days prior to the day such offering is first anticipated to commence, in the case of filing a new Shelf Registration Statement on Form S-3. Berkshire and Goldman Sachs must elect whether or not to participate in such Underwritten Block Trade on the day such offering is to commence, and the Company shall as expeditiously as possible use its reasonable best efforts (including co-operating with such Holders with respect to the provision of necessary information) to facilitate such Underwritten Block Trade (which may close as early as two (2) Business Days after the date it commences); provided that the Holder requesting such Underwritten Block Trade

shall use commercially reasonable efforts to work with the Company and the underwriters prior to making such request in order to facilitate preparation of offering documents related to the Underwritten Block Trade. For the avoidance of doubt, Holders other than Berkshire and Goldman Sachs shall not be entitled to demand, receive notice of, or to elect to participate in, a Underwritten Block Trade or any Shelf Registration Statement or prospectus to be used in connection with such Underwritten Block Trade.

(d) Demand Registration Priority. The Company shall not include in any Demand Registration any securities which are not Registrable Securities without the prior written consent of the Majority Participating Holders included in such registration. If a Demand Registration is an underwritten offering and the managing underwriters advise the Company in writing that, in their opinion, the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the Majority Participating Holders to be included in such registration therein, without adversely affecting the marketability of the offering, the Company shall include in such registration prior to the inclusion of any securities which are not Registrable Securities (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold in an orderly manner within the price range of such offering, pro rata among the respective Holders thereof on the basis of the number of Registrable Securities beneficially owned by each such Holder, and (ii) second, any other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder. Without the consent of the Company and the Majority Participating Holders included in such registration, any Persons other than Holders of Registrable Securities who participate in Demand Registrations which are not at the Company's expense must pay their share of the Expenses as provided in Section 2.5 hereof.

(e) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration (i) within thirty (30) days after a Demand Registration pursuant to this Section 2.1 that has been declared or ordered effective, (ii) during the period any applicable restrictions are still in effect pursuant to any Lock-Up Agreement that has not been waived (or is not reasonably expected to be waived) by the underwriters party thereto, (iii) if the Company shall furnish to such Holders a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board (after consultation with external legal counsel), any registration of Registrable Securities should not be made or continued (or sales under a Shelf Registration Statement should be suspended) because (i) such registration (or continued sales under a Shelf Registration Statement) would materially and adversely interfere with any existing or potential material financing, acquisition, corporate reorganization or merger or other material transaction or event involving the Company or any of its subsidiaries; (ii) the Company is in possession of material non-public information, the premature disclosure of which has been determined by the Board to not be in the Company's best interests or (iii) to comply with the Securities Act, the Exchange Act, or the respective rules and regulations promulgated thereunder (in any case, a "Valid Business Reason") then (x) the Company may postpone filing a registration statement relating to a Demand Registration Request or suspend sales under an existing Shelf Registration Statement until five (5) Business Days after such Valid Business Reason no longer

exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists and (y) in the case where a registration statement has been filed relating to a Demand Registration Request, if the Valid Business Reason has not resulted from actions taken by the Company, the Company may cause such registration statement to be withdrawn and its effectiveness terminated or may postpone amending or supplementing such registration statement until five (5) Business Days after such Valid Business Reason no longer exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists; and the Company shall give written notice to the Participating Holders of its determination to postpone or withdraw a registration statement or suspend sales under a Shelf Registration Statement and of the fact that the Valid Business Reason for such postponement, withdrawal or suspension no longer exists, in each case, promptly after the occurrence thereof; provided, however, that the Company shall not defer its obligation in this manner for more than (A) 60 days in any 90-day period or (B) for periods exceeding, in the aggregate, 90 days in any twelve-month period, or (z) in the case of a Demand Registration, consisting of a Long Form Registration, within 180 days after the effective date of a previous Long Form Registration or a previous registration in which the Holders of Registrable Securities were given piggyback rights pursuant to Section 2.2 and in which at least 75% of the number of Registrable Securities requested to be included by the Holders were included in such registration. In the event the Company gives written notice of a Valid Business Reason, the Holders of Registrable Securities initially requesting such Demand Registration shall be entitled to withdraw such request and, if such request is withdrawn, such Demand Registration shall not be treated as one of the permitted Demand Registrations hereunder and the Company shall pay all Expenses in connection with such registration. Notwithstanding the foregoing, the Company may postpone a Demand Registration hereunder only twice in any twelve-month period.

If the Company shall give any notice of postponement, withdrawal or suspension of any registration statement pursuant to clause (iv) of this Section 2.1(e), the Company shall not, during the period of postponement, withdrawal or suspension, register any Class A Common Stock, other than pursuant to a registration statement on Form S-4 or S-8 (or an equivalent registration form then in effect). Each Holder of Registrable Securities agrees that, upon receipt of any notice from the Company that the Company has determined to withdraw any registration statement pursuant to clause (iv) of this Section 2.1(e), such Holder will discontinue its disposition of Registrable Securities pursuant to such registration statement and, if so directed by the Company, will 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 that was in effect at the time of receipt of such notice. If the Company shall have withdrawn or prematurely terminated a registration statement filed pursuant to a Demand Registration (whether pursuant to clause (iv) of this Section 2.1(e) or as a result of any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court), the Company shall not be considered to have effected an effective registration for the purposes of this Agreement until the Company shall have filed a new registration statement covering the Registrable Securities covered by the withdrawn registration statement and such registration statement shall have been declared effective and shall not have been withdrawn. If the Company shall give any notice of withdrawal or postponement of a registration statement, the Company shall, not later than five (5) Business Days after the Valid Business Reason that caused such withdrawal or postponement no longer exists (but in no event later than 60 days after the date of the postponement or withdrawal), use its reasonable best efforts to effect the registration under the Securities Act of the Registrable Securities covered by the withdrawn or postponed registration statement in accordance with

Section 2.1 (unless the Initiating Holders shall have withdrawn such request, in which case the Company shall not be considered to have effected an effective registration for the purposes of this Agreement), and such registration shall not be withdrawn or postponed pursuant to clause (iv) of this Section 2.1(c).

(f) Selection of Underwriters. The Initiating Holder(s) shall have the right to select the managing underwriters for such registration, provided that, each such managing underwriter is reasonably satisfactory to the Company, which approval shall not be unreasonably withheld or delayed.

(g) Other Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of Holders that hold or Beneficially Own more than 50% of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are more favorable taken as a whole than the registration rights granted to the Holders hereunder unless the Company shall also give such rights to such Holders.

2.2. Piggyback Registrations.

(a) Piggyback Rights. If the Company at any time proposes to file a registration statement with respect to any offering of its securities for its own account or for the account of any Person who holds its securities (other than (i) a registration on Form S-4 or S-8 or any successor form to such forms, (ii) a registration of securities solely relating to an offering and sale to employees, directors or consultants of the Company pursuant to any employee stock plan or other employee benefit plan arrangement, (iii) a registration of non-convertible debt securities or (iv) an Underwritten Block Trade) (a "Piggyback Registration") then, as expeditiously as reasonably possible (but in no event less than ten (10) days following the date of filing such registration statement), the Company shall give written notice (the "Incidental Registration Notice") of such proposed filing to all Holders of Registrable Securities, and such notice shall offer the Holder the opportunity to register such number of Registrable Securities as each such Holder may request in writing. Subject to Section 2.2(c) and Section 2.2(d), the Company shall include in such registration statement all such Registrable Securities which are requested to be included therein within fifteen (15) days after the Incidental Registration Notice is given to such Holders.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the Board and managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Company, the Company shall include, after including all of the primary securities the Company desires to include in such registration, (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold in an orderly manner within the price range acceptable to the Holder(s), pro rata among the respective Holders thereof on the basis of the number of Registrable Securities beneficially owned by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities beneficially owned by each such Holder. No employee stockholder of the Company will

be entitled to include Registrable Securities in an underwritten offering requested by the Initiating Holders pursuant to Section 2.1 to the extent that the managing underwriters and the Board of such underwritten offering shall determine in good faith that the participation of such employee stockholder, in whole or in part, would adversely affect the marketability of the securities being sold by the Initiating Holders in such underwritten offering.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of Holders of the Company's securities, and the managing underwriters and the Board advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the consent of the Majority Participating Holders to be included in such registration, the Company shall include in such registration (i) first, the securities requested to be included therein by the Holders requesting such registration and the Registrable Securities requested to be included in such registration, pro rata among the Holders of such securities and such Registrable Securities on the basis of the number of shares beneficially owned by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder. No Holder who is an employee stockholder of the Company will be entitled to include Registrable Securities in an underwritten offering requested by the Initiating Holders pursuant to Section 2.1 to the extent that the managing underwriters and the Board of such underwritten offering shall determine in good faith that the participation of such employee stockholder, in whole or in part, would adversely affect the marketability of the securities being sold by the Initiating Holders in such underwritten offering.

(d) Selection of Underwriters. If any Piggyback Registration is an underwritten secondary offering on behalf of the Holders of the Company's securities, the Initiating Holder selection of investment banker(s) and manager(s) for the offering must be approved in writing by the Company.

(e) Other Registrations. If the Company has previously filed a registration statement with respect to Registrable Securities pursuant to Section 2.1 or pursuant to this Section 2.2, and if such previous registration has not been withdrawn or abandoned or all shares offered thereunder have not been sold, the Company shall not file or cause to be effected any other registration of any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act (except on Form S-8 or any successor form), whether on its own behalf or at the request of any Holder or Holders of such securities, until a period of at least 180 days has elapsed from the effective date of such previous registration.

2.3. Holdback Agreements.

(a) Each Holder agrees not to offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, enter into a transaction which would have the same effect or would otherwise effect a public sale or distribution (including sales pursuant to Rule 144), or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of

the economic consequences of ownership of such securities, whether any such aforementioned transaction is to be settled by delivery of such securities or other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, in each case during the period beginning seven (7) days before and ending up to 180 days in connection with an initial public offering and up to 90 days in connection with a subsequent underwritten public offering, as requested by Berkshire or the underwriters of such initial public offering or subsequent underwritten public offering, as applicable; provided that no Participating Holders shall be required to agree to any lock-up restrictions to which Berkshire is not subject and shall be released from any restrictions to which Berkshire is not subject and shall be released from any such restrictions simultaneous with and to the same extent as any other Participating Holder. In addition, each Holder of Registrable Securities agrees to execute any further letters, agreements and/or other documents reasonably requested by the Company or its underwriters which are consistent with the terms of this Section 2.3(a). The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such restricted period.

(b) The Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such equity securities, during the period beginning seven (7) days before and ending 180 days after the effective date of any underwritten public offering of the Company's equity securities (including Demand Registrations and Piggyback Registrations) (except as part of such underwritten registration or pursuant to registrations on Form S-4 or S-8 or any successor form), unless the underwriters managing the registered public offering otherwise agree, and (ii) shall cause each Holder of its equity securities, or any securities convertible into or exchangeable or exercisable for equity securities, purchased or otherwise acquired from the Company at any time after the date of this Agreement (other than in a registered public offering) to agree not to effect any public sale or distribution (including sales pursuant to Rule 144) of any such securities during any such period (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree and such agreement permits all Holders of Registrable Securities to sell such securities on a pro rata basis.

2.4. Registration Procedures. If and whenever the Company is required by the provisions of this Agreement to effect or cause the registration of any Registrable Securities under the Securities Act as provided in this Agreement, the Company shall use its reasonable best efforts to effect the registration and the widely disseminated sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall, as expeditiously as possible:

(a) prepare and file with the SEC and FINRA all filings required for the consummation of the offering, including preparing and filing with the SEC a registration statement on the appropriate form of the SEC for the disposition of such Registrable Securities in accordance with the intended method of disposition thereof, which registration form (i) shall be selected by the Company and (ii) shall, in the case of a shelf registration, be available for the sale of the Registrable Securities by the selling Holders thereof and such registration statement shall comply as to form in all material respects with the requirements of the applicable registration form and include all financial statements required by the SEC to be filed therewith, and the Company shall use its reasonable best efforts to cause such registration statement to become effective and remain

continuously effective from the date such registration statement is declared effective until the earliest to occur of (A) the first date as of which all of the Registrable Securities included in the registration statement have been sold or (B) a period of 90 days in the case of an underwritten offering effected pursuant to a registration statement other than a Shelf Registration Statement and a period of three (3) years in the case of a Shelf Registration Statement (provided that before filing a registration statement or prospectus or any amendments or supplements thereto, the Company shall furnish to the counsel selected by the Majority Participating Holders covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(b) notify each Holder of Registrable Securities of the effectiveness of each registration statement filed hereunder and prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith and such free writing prospectuses and Exchange Act reports as may be necessary to keep such registration statement continuously effective for the period set forth in Section 2.4(a) and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement (and, in connection with any Shelf Registration Statement, file one or more prospectus supplements pursuant to Rule 424 under the Securities Act covering Registrable Securities upon the request of one or more Holders wishing to offer or sell Registrable Securities whether in an underwritten offering or otherwise);

(c) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(d) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) promptly notify each seller of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(f) promptly notify each Participating Holder and each managing underwriter, if any: (i) when the registration statement, any pre-effective amendment, the prospectus or any prospectus supplement related thereto, any post-effective amendment to the registration statement or any free writing prospectus has been filed and, with respect to the registration statement or any post-effective amendment, when the same has become effective; (ii) of any request by the SEC or state securities authority for amendments or supplements to the registration statement or the prospectus related thereto or for additional information; (iii) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the securities or state "blue sky" laws of any jurisdiction or the initiation of any proceeding for such purpose; (v) of the existence of any fact of which the Company becomes aware which results in the registration statement or any amendment thereto, the prospectus related thereto or any supplement thereto, any document incorporated therein by reference, any free writing prospectus or the information conveyed to any purchaser at the time of sale to such purchaser containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statement therein not misleading; and (vi) if at any time the representations and warranties contemplated by any underwriting agreement, securities sale agreement, or other similar agreement, relating to the offering shall cease to be true and correct in all material respects prior to closing of such offering; and, if the notification relates to an event described in clause (v), the Company shall promptly prepare and furnish to each such seller and each underwriter, if any, a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Securities, 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 in the light of the circumstances under which they were made not misleading;

(g) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, cause all such Registrable Securities to be listed on a national securities exchange and, without limiting the generality of the foregoing, to arrange for at least two (2) market makers to register as such with respect to such Registrable Securities with FINRA, if necessary;

(h) cause its senior management, officers and employees to participate in, and to otherwise facilitate and cooperate with the preparation of the registration statement and prospectus and any amendments or supplements thereto (including participating in meetings, drafting sessions, due diligence sessions and rating agency presentations) taking into account the Company's reasonable business needs;

(i) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(j) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Majority Participating Holders being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including effecting a stock split or a combination of shares);

(k) in any transaction involving the use of an underwriter or underwriters, use its reasonable best efforts (i) to obtain an opinion from the Company's counsel, including local and/or regulatory counsel, and a comfort letter and updates thereof from the Company's independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement, in each case, in customary form and covering such matters as are customarily covered by such opinions and comfort letters (including, in the case of such comfort letter, events subsequent to the date of such financial statements) delivered to underwriters in underwritten public offerings, which opinion and letter shall be dated the dates such opinions and comfort letters are customarily dated and otherwise reasonably satisfactory to the underwriters, if any, and (ii) furnish to each Holder participating in the offering and to each underwriter, if any, a copy of such opinion and letter addressed to such underwriter;

(l) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(m) deliver promptly to counsel for each Participating Holder and to each managing underwriter, if any, copies of all correspondence between the SEC and the Company, its counsel or auditors and all memoranda relating to discussions with the SEC or its staff with respect to the registration statement, and, upon receipt of such confidentiality agreements as the Company may reasonably request, make reasonably available for inspection by counsel for each Participating Holder, by counsel for any underwriter, participating in any disposition to be effected pursuant to such registration statement and by any accountant or other agent retained by any Participating Holder or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by any such counsel for a Participating Holder, counsel for an underwriter, accountant or agent in connection with such registration statement;

(n) use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness of the registration statement, or the prompt lifting of any suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction, in each case, as promptly as reasonably practicable;

(o) provide a CUSIP number for all Registrable Securities, not later than the effective date of the registration statement;

(p) use its best efforts to make available its senior management, employees and personnel for participation in "road shows" and other marketing efforts and otherwise provide reasonable assistance to the underwriters (taking into account the needs of the Company's businesses and the requirements of the marketing process) in marketing the Registrable Securities in any underwritten offering;

(q) promptly prior to the filing of any document which is to be incorporated by reference into the registration statement or the prospectus (after the initial filing of such registration statement), and prior to the filing of any free writing prospectus, provide copies of such document to counsel for each Participating Holder and to each managing underwriter, if any, and make the Company's representatives reasonably available for discussion of such document and make such changes in such document concerning the Participating Holders prior to the filing thereof as counsel for the Participating Holders or underwriters may reasonably request;

(r) furnish to counsel for each Participating Holder and to each managing underwriter, without charge, at least one (1) signed copy of the registration statement and any post-effective amendments or supplements thereto, including financial statements and schedules, all documents incorporated therein by reference, the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus), any other prospectus filed under Rule 424 under the Securities Act and all exhibits (including those incorporated by reference) and any free writing prospectus utilized in connection therewith;

(s) cooperate with the Participating Holders and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates not bearing any restrictive legends representing the Registrable Securities to be sold, and cause such Registrable Securities to be issued in such denominations and registered in such names in accordance with the underwriting agreement at least two (2) Business Days prior to any sale of Registrable Securities to the underwriters or, if not an underwritten offering, in accordance with the instructions of the Participating Holders at least two (2) Business Days prior to any sale of Registrable Securities and instruct any transfer agent and registrar of Registrable Securities to release any stop transfer orders in respect thereof;

(t) cooperate with any due diligence investigation by any manager, underwriter or Participating Holder and make available such documents and records of the Company and its Subsidiaries that they reasonably request (which, in the case of the Participating Holder, may be subject to the execution by the Participating Holder of a customary confidentiality agreement in a form which is reasonably satisfactory to the Company);

(u) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(v) use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its securityholders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(w) permit any Holder of Registrable Securities which Holder, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included;

(x) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any of the Company's equity securities included in such registration statement for sale in any jurisdiction, the Company shall use its best efforts promptly to obtain the withdrawal of such order;

(y) use its best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(z) in any transaction involving the use of an underwriter or underwriters, use its reasonable best efforts to obtain a cold comfort letter from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the Majority Participating Holders reasonably request; provided that such Registrable Securities constitute at least 10% of the securities covered by such registration statement;

(aa) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities;

(bb) take all reasonable action to ensure that any free writing prospectus utilized in connection with any registration covered by Section 2.1 or Section 2.2 complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(cc) in connection with any underwritten offering, if at any time the information conveyed to a purchaser at the time of sale includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, promptly file with the SEC such amendments or supplements to such information as may be necessary so that the statements as so amended or supplemented will not, in the light of the circumstances, be misleading.

2.5. Registration Expenses. All Expenses incurred in connection with any registration, filing, qualification or compliance pursuant to Article 2 shall be borne by the Company, whether or not a registration statement becomes effective. All underwriting discounts and all selling commissions relating to securities registered by the Holders shall be borne by the Holders of such securities pro rata in accordance with the number of shares sold in the offering by such Participating Holder.

2.6. No Required Sale. Nothing in this Agreement shall be deemed to create an independent obligation on the part of any Holder to sell any Registrable Securities pursuant to any effective registration statement.

2.7. Indemnification.

(a) In the event of any registration or offering of any securities of the Company under the Securities Act pursuant to this Article 2, the Company will, and hereby agrees to, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, fiduciaries, trustees, employees, shareholders, members or general and limited partners (and the directors, officers, fiduciaries, employees, shareholders, members, beneficiaries or general and limited partners thereof), any underwriter (as defined in the Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or Exchange Act, from and against any and all losses, claims, damages or liabilities, joint or several, actions or proceedings (whether commenced or threatened) and expenses (including reasonable fees of counsel and any amounts paid in any settlement effected with the Company's consent, which consent shall not be unreasonably withheld or delayed) to which each such indemnified party may become subject under the Securities Act or otherwise in respect thereof (collectively, "Claims"), insofar as such Claims arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement under which such securities were registered under the Securities Act or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary or final prospectus or any amendment or supplement thereto, together with the documents incorporated by reference therein, or any free writing prospectus utilized in connection therewith, or the omission or alleged omission to state therein 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, or (iii) any untrue statement or alleged untrue statement of a material fact in the information conveyed by the Company to any purchaser at the time of the sale to such purchaser, or the omission or alleged omission to state therein a material fact required to be stated therein, or (iv) any violation by the Company of any federal, state or common law rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration, and the Company will reimburse any such indemnified party for any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the Company shall not be liable to any such indemnified party in any such case to the extent such Claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact made in such registration statement or amendment thereof or supplement thereto or in any such prospectus or any preliminary or final prospectus or free writing prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such indemnified party specifically for use therein. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such seller.

(b) Each Participating Holder shall, severally and not jointly, indemnify and hold harmless (in the same manner and to the same extent as set forth in paragraph (a) of this Section 2.7) to the extent permitted by law the Company, its officers and directors, each Person controlling the Company within the meaning of the Securities Act, each underwriter (within the meaning of the Securities Act) of the Company's securities covered by such a registration statement, any Person who controls such underwriter, and any other Holder selling securities in such registration statement and each of its directors, officers, partners or agents or any Person who controls such

Holder with respect to any untrue statement or alleged untrue statement of any material fact in, or omission or alleged omission of any material fact from, such registration statement, any preliminary or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus utilized in connection therewith, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company or its representatives by or on behalf of such Participating Holder, specifically for use therein and reimburse such indemnified party for any legal or other expenses reasonably incurred in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the aggregate amount which any such Participating Holder shall be required to pay pursuant to this Section 2.7(b) and Section 2.7(d) shall in no case be greater than the amount of the net proceeds actually received by such Participating Holder upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim. The Company and each Participating Holder hereby acknowledge and agree that, unless otherwise expressly agreed to in writing by such Participating Holders to the contrary, for all purposes of this Agreement, the only information furnished or to be furnished to the Company for use in any such registration statement, preliminary or final prospectus or amendment or supplement thereto or any free writing prospectus are statements specifically relating to (a) the Beneficial Ownership of Class A Common Stock by such Participating Holder and its Affiliates and (b) the name and address of such Participating Holder. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such Holder.

(c) Any Person entitled to indemnification under this Agreement shall notify promptly the indemnifying party in writing of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 2.9, but the failure of any indemnified party to provide such notice shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 2.9, except to the extent the indemnifying party is materially and actually prejudiced thereby and shall not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under this Article 2. In case any action or proceeding is brought against an indemnified party, the indemnifying party shall be entitled to (x) participate in such action or proceeding and (y) unless, in the reasonable opinion of outside counsel to the indemnified party, a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, assume the defense thereof jointly with any other indemnifying party similarly notified, with counsel reasonably satisfactory to such indemnified party. The indemnifying party shall promptly notify the indemnified party of its decision to assume the defense of such action or proceeding. If, and after, the indemnified party has received such notice from the indemnifying party, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense of such action or proceeding other than reasonable costs of investigation; provided, however, that (i) if the indemnifying party fails to take reasonable steps necessary to defend diligently the action or proceeding within ten (10) days after receiving notice from such indemnified party that the indemnified party believes it has failed to do so; or (ii) if such indemnified party who is a defendant in any action or proceeding which is also brought against the indemnifying party reasonably shall have concluded that there may be one or more legal or equitable defenses available to such indemnified party which are not available to the indemnifying party or which may conflict with those available to another

indemnified party with respect to such Claim; or (iii) if representation of both parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct, then, in any such case, the indemnified party shall have the right to assume or continue its own defense as set forth above (but with no more than one (1) firm of counsel for all indemnified parties in each jurisdiction, except to the extent any indemnified party or parties reasonably shall have made a conclusion described in clause (ii) or (iii) above) and the indemnifying party shall be liable for any expenses therefor. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim), unless such settlement or compromise (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. The indemnity obligations contained in Section 2.7(a) and Section 2.7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the indemnified party which consent shall not be unreasonably withheld.

(d) If for any reason the foregoing indemnity is held by a court of competent jurisdiction to be unavailable to an indemnified party under Section 2.7(a) or Section 2.7(b), then each applicable indemnifying party shall contribute to the amount paid or payable to such indemnified party as a result of any Claim 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 hand, with respect to such Claim as well as any other relevant equitable considerations. The relative fault shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. If, however, the allocation provided in the second preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if any contribution pursuant to this Section 2.7(d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the preceding sentences of this Section 2.7(d). The amount paid or payable in respect of any Claim shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Notwithstanding anything in this Section 2.7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 2.7(d) to contribute any amount greater than the amount of the net proceeds actually received by such indemnifying party upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim, less the amount of any indemnification payment made by such indemnifying party pursuant to Section 2.7(b).

(e) The indemnity and contribution agreements contained herein shall be in addition to any other rights to indemnification or contribution which any indemnified party may have pursuant to law or contract (except as set forth in subsection (f) below) and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any indemnified party and shall survive the transfer of the Registrable Securities by any such party and the completion of any offering of Registrable Securities in a registration statement.

(f) If a customary underwriting agreement shall be entered into in connection with any registration pursuant to Section 2.1 or Section 2.2 and certain indemnity, contribution and related provisions between the Company and the Participating Holder, the indemnity, contribution and related provisions set forth therein shall supersede the indemnification and contribution provisions set forth in this Section 2.7.

2.8. Participation in Underwritten Registrations. No Person may participate in any registration hereunder which is underwritten unless such Person (i) agrees to sell such Person's Registrable Securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements; provided that no Holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such Holder and such Holder's intended method of distribution).

2.9. No Inconsistent Agreements. The Company shall not hereafter enter into any agreement with respect to its securities that is inconsistent with or violates the rights granted to the Holders in this Agreement.

Section 3. General

3.1. Rule 144 and Rule 144A. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act in respect of the Class A Common Stock or Common Stock Equivalents, the Company covenants that (i) so long as it remains subject to the reporting provisions of the Exchange Act, it will timely file the reports required to be filed by it under the Securities Act or the Exchange Act (including, but not limited to, the reports under Sections 13 and 15(d) of the Exchange Act referred to in subparagraph (c)(1)(i) of Rule 144 promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144") or, if the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available other information so long as necessary to permit sales by such Holder under Rule 144, Rule 144A promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144A"), or any similar rules or regulations hereafter adopted by the SEC, and (ii) it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144, (B) Rule 144A or (C) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

3.2. Nominees for Beneficial Owners. If Registrable Securities are held by a nominee for the Beneficial Owner thereof, the Beneficial Owner thereof may, at its option, be treated as the Holder of such Registrable Securities for purposes of any request or other action by any Holder or Holders of Registrable Securities pursuant to this Agreement (or any determination of any number or percentage of shares constituting Registrable Securities held by any Holder or Holders of Registrable Securities contemplated by this Agreement); provided that the Company shall have received assurances reasonably satisfactory to it of such Beneficial Ownership.

3.3. Amendments and Waivers. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or Berkshire unless such modification, amendment or waiver is approved in writing by (i) the Company and (ii) Berkshire; provided that any amendment, modification, supplement or waiver of any of the provisions of this Agreement shall not disproportionately and materially adversely affect Goldman Sachs. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or of any other or future exercise of any such right, power or privilege.

3.4. Notices.

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by e-mail, (iii) when received or rejected by the addressee if sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) one (1) Business Day following the day sent by reputable overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

(i) if to the Company, to:

Portillo's Inc.
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Susan B. Shelton
E-mail: [REDACTED]

with a copy, which shall not constitute notice, to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Alexander D. Lynch, Merritt S. Johnson, Shayla Harlev
Email: alex.lynch@weil.com; merritt.johnson@weil.com;
shayla.harlev@weil.com

(ii) if to the Holders, to the address indicated in the records of the Company.

(b) Whenever any notice is required to be given by law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

3.5. Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and the respective successors, permitted assigns, heirs and personal representatives of the parties hereto, whether so expressed or not. This Agreement may not be assigned by the Company without the prior written consent of Berkshire. Each Holder shall have the right to assign all or part of its or their rights and obligations under this Agreement only in accordance with transfers of Registrable Securities to such Holder's Permitted Transferees. Upon any such assignment, such assignee shall have and be able to exercise and enforce all rights of the assigning Holder which are assigned to it and, to the extent such rights are assigned, any reference to the assigning Holder shall be treated as a reference to the assignee. If any Holder shall acquire additional Registrable Securities, such Registrable Securities shall be subject to all of the terms, and entitled to all the benefits, of this Agreement.

3.6. Entire Agreement. This Agreement and the other documents referred to herein, delivered pursuant hereto or which form part hereof, constitute the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

3.7. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS AND JUDICIAL DECISIONS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS EXECUTED AND PERFORMED ENTIRELY WITHIN SUCH STATE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

(b) Jurisdiction. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of (i) the Court of Chancery of the State of Delaware and (ii) the United States District Court located in the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement in (I) the Court of Chancery of the State of Delaware or (II) the United States District Court located in the State of Delaware and waives any claim that such suit or proceeding has been brought in an inconvenient forum. Each of the parties hereto agrees that a final and unappealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction within or outside the United States or in any other manner provided in law or in equity

(c) WAIVER OF JURY TRIAL. EACH PARTY 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 (I) 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, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (III) IT MAKES SUCH WAIVER VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 3.7.

3.8. Interpretation; Construction.

(a) The table of contents and headings in this Agreement are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

3.9. Counterparts. This Agreement may be executed and delivered in any number of separate counterparts (including by facsimile, electronic mail or electronic signatures), each of which shall be an original, but all of which together shall constitute one and the same agreement.

3.10. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

3.11. Remedies. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without the posting of any bond, and, if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

3.12. Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

3.13. Confidentiality.

(a) Each Holder acknowledges that the provisions of this Agreement that require communications by the Company or other Holders to such Holder may result in such Holder and its Section 3.13 Representatives acquiring material non-public information (which may include, solely by way of illustration, the fact that an offering of the Company's securities is pending or the number of Company securities or the identity of the selling Holders).

(b) Each Holder agrees that it will maintain the confidentiality of such material non-public information and, to the extent such Holder is not a natural person, such confidential treatment shall be in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder ("Policies"); provided that a Holder may deliver or disclose material non-public information to (i) its directors, officers, employees, agents, attorneys, Affiliates and financial and other advisors, in each case, who reasonably need to know such information (collectively, the "Section 3.13 Representatives"), (ii) any federal or state regulatory authority having jurisdiction over such Holder, (iii) any Person if necessary to effect compliance with any law, rule, regulation or order applicable to such Holder, (iv) in response to any subpoena or other legal process, or (v) in connection with any litigation to which such Holder is a party and such Holder is advised by counsel that such information reasonably needs to be disclosed in connection with such litigation; provided further, that in the case of clause (i), the recipients of such material non-public information are subject to the Policies or are directed to hold confidential the material non-public information in a manner substantially consistent with the terms of this Section 3.13.

(c) Each Holder shall have the right, at any time and from time to time (including after receiving information regarding any potential sale or distribution to the public of Class A Common Stock of the Company pursuant to an offering registered under the Securities Act, whether by the Company, by Holders and/or by any other Holders of the Company's Class A Common Stock), to elect to not receive any notice that the Company or any other Holders otherwise are required to deliver pursuant to this Agreement by delivering to the Company a written statement signed by such Holder that it does not want to receive any notices hereunder (an "Opt-Out Request"); in which case and notwithstanding anything to the contrary in this Agreement the Company and other Holders shall not be required to, and shall not, deliver any notice or other information required to be provided to Holders hereunder to the extent that the Company or such other Holders reasonably expect would result in a Holder acquiring material non-public information. An Opt-Out Request may state a date on which it expires or, if no such date is specified, shall remain in effect

indefinitely. A Holder who previously has given the Company an Opt-Out Request may revoke such request at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Requests; provided that each Holder shall use commercially reasonable efforts to minimize the administrative burden on the Company arising in connection with any such Opt-Out Requests.

3.14. Termination and Effect of Termination. This Agreement shall terminate with respect to each Holder when such Holder no longer holds any Registrable Securities and will terminate in full when no Holder holds any Registrable Securities, except for the provisions of Sections 2.7, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 2.7 shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

[Remainder of Page Intentionally Left Blank]

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

COMPANY:

PORTILLO'S INC.

By: _____
Name:
Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

HOLDERS:

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Schedule I

Key Holders

Schedule II

Berkshire Entities

EXHIBIT A

**FORM OF
JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (this “Joinder”) is made and entered into as of _____ by the undersigned (the “New Holder”) in accordance with the terms and conditions set forth in that certain Registration Rights Agreement by and among Portillo’s Inc., a Delaware corporation (including any successor, the “Company”), and the Holders party thereto, dated as of _____, 2021 (as the same may be amended, restated or otherwise modified from time to time, the “Registration Rights Agreement”), for the benefit of, and for reliance upon by, the Company and the Holders party thereto. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Registration Rights Agreement.

WHEREAS, the New Holder desires to exercise certain rights granted to it under the Registration Rights Agreement; and

WHEREAS, the execution and delivery to the Company of this Joinder by the New Holder is a condition precedent to the New Holder’s exercise of any of its rights under the Registration Rights Agreement.

NOW, THEREFORE, in consideration of the premises and covenants herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the New Holder hereby agrees as follows:

1. Joinder. By the execution and delivery of this Joinder, the New Holder hereby agrees to become, and to be deemed to be, and shall become and be deemed to be, for all purposes under the Registration Rights Agreement, a Holder, with the same force and effect as if the New Holder had been an original signatory thereto, and the New Holder agrees to be bound by all of the terms and conditions of, and to assume all of the obligations of, a Holder under, the Registration Rights Agreement. All of the terms, provisions, representations, warranties, covenants and agreements set forth in the Registration Rights Agreement with respect to a Holder are incorporated by reference herein and shall be legally binding upon, and inure to the benefit of, the New Holder.

2. Further Assurances. The New Holder agrees to perform any further acts and execute and deliver any additional documents and instruments that may be necessary or reasonably requested by the Company to carry out the provisions of this Joinder or the Registration Rights Agreement.

3. Binding Effect. This Joinder and the Registration Rights Agreement shall be binding upon, and shall inure to the benefit of, the New Holder and its successors and permitted assigns, subject to the terms and provisions of the Registration Rights Agreement. It shall not be necessary in connection with the New Holder’s status as a Holder to make reference to this Joinder.

IN WITNESS WHEREOF, the New Holder has executed this Joinder as of the date first above written.

[NEW HOLDER]

By: _____

Name: _____

Title: _____

Address:

Accepted and agreed:

Portillo's Inc.

By: _____

Name: _____

Title: _____